UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Orbit Sports, LLC, Plaintiff,	)	CIVIL FILE NO. 21-CV-1289 (ECT/TNL)
vs.	)	
Glen Taylor; Taylor Corporation; and Taylor Sports Group, Inc., Defendants.	)	Courtroom 3B Wednesday, June 30, 2021 St. Paul, Minnesota 1:00 P.M.

HEARING ON

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION
- and -
DEFENDANTS' MOTION TO DISMISS

BEFORE THE HONORABLE ERIC C. TOSTRUD
UNITED STATES DISTRICT JUDGE

TIMOTHY J. WILLETTE, RDR, CRR, CRC
Official Court Reporter - United States District Court
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(1:00 p.m.)

P R O C E E D I N G S

IN OPEN COURT

THE COURT: Good afternoon, everyone. Please be seated. This is Orbit Sports, LLC, versus Glen Taylor and others, Civil File Number 21-1289.

I'll invite counsel to note their appearances for the record, please, starting with Plaintiff.

MR. KRAUSS: Good afternoon, Your Honor. This is Michael Krauss with Greenberg Traurig, LLP, for the Plaintiff, Orbit Sports, LLC. With me is my colleague Paul Schafhauser, who's been admitted *pro hac vice*, and our colleague Peter Kieselbach.

THE COURT: Wonderful. Good afternoon.

MR. KIESELBACH: Good afternoon, Your Honor.

THE COURT: All right. And how about for Defendants?

MR. BAUDRY: Good afternoon, Your Honor. Alain Baudry and Courtland Merrill from Saul Ewing for the Taylor party defendants, and to my left is Greg Jackson, General Counsel of Taylor Corporation.

THE COURT: Wonderful. Good afternoon.

All right. Let me just get a few ground rules out there, and I appreciate that you may have heard some of this before, but I think it's good to just remind everyone how

we'll do things today.

Since Orbit filed its motion first -- I know you filed them on the same day -- Orbit will go first here today in the hearing. Though we normally use the podium, I'll ask that you remain seated today when you make your arguments. Please remove your masks when you're talking if you would. It makes it a lot easier to create a record.

I understand that it's -- one or both of you may have to use the document camera. Obviously that's fine if you have to come up to the podium for that. Make sure that your microphone's on and relatively close to you.

It's wonderful to see everybody here in person. We've been doing this by Zoom for way too long and it's a wonderful substitute, but it's not a perfect substitute, so it's great to see everybody here live and in person.

One thing we have noticed is that folks have had a tendency to be talking quite quickly, so please moderate your pace as best you can so we create an accurate record here today.

Let me ask before I go any further, Mr. Schafhauser, if you'll be doing the arguing on behalf of plaintiff, I take it?

MR. SCHAFHAUSER: Your Honor, we've actually split up, Mr. Krauss and I, the argument, so I'll be doing the injunction motion. Mr. Krauss will be doing the motion to

dismiss.

THE COURT: Okay. Let's -- any questions about the instructions or directions that I've just given? Any concerns with any of that?

MR. SCHAFHAUSER: None whatsoever, Your Honor. We understand and appreciate it.

THE COURT: All right. Great. Mr. Baudry.

MR. BAUDRY: Understood.

THE COURT: Great. All right. Then let's proceed.

MR. SCHAFHAUSER: Thank you, Your Honor.

I must confess. Sitting in front of a federal judge is a little bit out of my league, but I will comply with Your Honor's request under the circumstances.

Could you please put on the screen our exhibits.

Your Honor, we have prepared some documents which we'll put on the screen, but just by way of preview, of course the Court is aware that we are seeking a preliminary injunction and also asking for specific performance of certain terms in the Partnership Agreement. There are really four terms that we'll go through today that we believe warrant specific performance.

I need not tell Your Honor what the standard is. Your Honor is well familiar with it. Of course, just cutting to the chase here, I'd like to deal at some length

with the probability of success, because of course the courts have recognized that probability of success is the most important of the four factors, although we'll go through all four.

In this case, Your Honor, I respectfully submit on behalf of our client that we not only here have a reasonable probability of success, or a 50 percent probability of success, or a potential probability of success, but respectfully, we have an overwhelming likelihood of success here. And it's best illustrated, I would submit to Your Honor, by the fact that there have been three separate submissions by the defendants to this Court, and in all three of those submissions -- and we'll go through them momentarily, but in all three of those submissions the defendants have used ellipses to essentially try to eliminate a key portion of what constitutes a control sale, series of related transactions. They seem to overlook that. That fact, the fact that they have really no answer for series of related transactions and a series of related transactions constitutes a control sale, speaks volumes, I respectfully submit.

So with that I would like to ask my colleague to go to the first slide and we'll walk through some of the language. Your Honor, this is Section 10.7 of the Partnership Agreement which we've all -- both sides have

submitted. And Section --

THE COURT: I should note before you go any further that I've read the agreement, not just the provisions that you've cited, but the whole thing.

MR. SCHAFHAUSER: Thank you, Your Honor. I appreciate that and I think both sides appreciate Your Honor's diligence in reading everything through.

So I will not belabor the point of going through every last line of this, but there are some aspects that I did want to highlight here in Section 10.7. Actually, to highlight those provisions, why don't we go to the next slide where we've highlighted certain of those provisions.

10.7, Your Honor, as you can see on the screen, provides: "[I]n the event that one or more members of the Taylor Group" -- and I'm going to stop right there, that phrase, "one or more members of the Taylor Group."

The Taylor parties, Your Honor, have argued to this Court that the only triggering event for a control sale is when general partnership interests are sold. That's their position as we understand it in their papers. That is not what this document, however, says. The document says -- it doesn't say here: In the event that the general partner proposes to enter into a control sale. It doesn't say in the event that the holder of the general partnership interests sells the interest. It says: "[I]n the event

that one or more members of the Taylor Group (which includes one or more persons that collectively own, directly or indirectly, a majority of the General Partnership Interests)." That's what it says. So just to begin, it's not limited to the holder of the general partnership interests. It's broader than that.

Then it says, 10.7(a), "[I]n the event that one or more members [] proposes to enter a Control Sale." Obviously when it references the proposal to enter into, that's a future event.

Again, the Taylor parties take the position before Your Honor that it's when the NBA has approved it, when a transfer is effective under Section 10.1, which we'll get to momentarily, that's when my client has a right under 10.7, because it's only when a transfer is effective that my client has tag-along rights. But again, that is contradicted and belied by the provisions set forth in 10.7(a). It's when a proposal is made, when the Taylor parties propose to prospectively enter into a control sale, a future event that has not yet occurred. That's when the triggering event occurs.

It then goes on to say: "[T]hen," meaning at that time, immediately, "then each Limited Partner [] shall have the right [] to elect to participate ...."

THE COURT: I take it a future slide will get at

the question of whether Defendants have not exercised their drag-along rights.

MR. SCHAFHAUSER: Yes. Well, let me address that now then. I don't want to wait till a future slide. Let me address Your Honor's question.

Peter, could you go to 10.7(b), please.

THE COURT: Because I've got to harmonize both those provisions, correct?

MR. SCHAFHAUSER: Yes, absolutely. And what we just went through, Your Honor, in 10.7(a) was that when a proposal is made, then there is an opportunity for the Taylor parties -- and I want to read the words -- if the selling partner does not exercise the drag-along right with respect to such sale. That's 10.7(a).

Now let's go to 10.7(b) which is now on the screen.

Thank you, Peter.

10.7(b) is at a different point in time. 10.7(b) says: "The Selling Partner shall provide each of the Tag-Along partners with written notice of the proposed Tag-Along Sale" -- by the way, again, proposed, the sale hasn't occurred, a future event, proposed -- "within" -- when does it have to happen? -- "within ten days following the execution of any definitive agreement [] entered into with respect to the Tag-Along Sale."

So now we're at a different point in time. There's a proposal that's made. I'm proposing to enter into a control sale. Now we're at a different point in time. Now there has been a definitive agreement executed and ten days have passed following the execution of that definitive agreement. At that moment in time, Your Honor, there's an obligation that the Taylor parties have. The Taylor parties have an obligation to provide a notice that a tag-along sale has occurred. That's what 10.7(b) provides. And the point, Your Honor, is this:

The Taylor parties have the period of time from when they first propose to enter into a control sale until the period of time ten days after they've actually signed a definitive agreement regarding such a control sale to decide whether or not they're exercising their drag-along rights. And what did the Taylor parties do here? Because here they did sign a definitive agreement. They signed the equity interest purchase agreement. What did they do here?

Well, on the tenth day, Your Honor, on the tenth day, the Taylor parties sent a letter -- actually, the letter is dated May 17th, 2021, and in that letter, Mr. Taylor says: "The second tranche is" -- and I'm quoting --

THE COURT: Sorry. This is Exhibit J to Mr. Orbach's --

MR. SCHAFHAUSER: Yes, Your Honor, and subparagraph 7 on the second page. Mr. Taylor says:

"[T]he Second Tranche is the only option including any general partnership interests" -- by the way, there it is again, the assertion that only general partnership interests constitute a control sale -- "the only option including any general partnership interests so a 'Control Sale' for purposes of the MTBLP Partnership Agreement would not arise unless and until the Second Tranche option is exercised and consummated."

In other words, what Mr. Taylor is saying through this letter and did say in writing five weeks ago, or maybe now six weeks ago, is that there is no control sale now. Not only is he saying he's not exercising his drag-along rights now. He's saying he doesn't have any drag-along rights now. He's saying he has no drag-along rights to exercise because there's no control sale today.

So, Peter, could we go back to 10.7(a), please.

So that brings me back, Your Honor, to 10.7(a) -- thank you, Peter -- where it says: [A]nd the Selling Partner does not exercise the Drag-Along Right with respect to such sale ...." So it's not just that the selling partner can sit back forever and say, "I'm not exercising my Drag-Along Right and therefore you never have a tag-along right, you never have it, because I'm just not exercising

it. I refuse to recognize that a control sale has occurred, I'm just not exercising it, and therefore I can block you." That's not the way this document works, Your Honor. There's a period of time prescribed. There's a procedure set forth. 10.7(b) puts an affirmative obligation on the Taylor parties to provide a sale notice within ten days after the execution of a definitive agreement. That date passed on May 24th of this year. And at no time did the Taylor parties say, "By the way, a control sale has occurred and I'm exercising my drag-along rights." They said the opposite. They said a control sale has not occurred. They said it to us, they said it to Your Honor, they said it in pleadings, and I think they're going to say it this afternoon through their capable counsel, that no control sale has occurred. So, if no control sale has occurred, the Taylor parties are taking the position that there are no drag-along rights for them to exercise, but we respectfully differ for the reasons that we'll get into. But again, I wanted to address Your Honor's question about the interplay between the drag-along rights and the tag-along rights.

But last point on this before we proceed. And again, I just want to address this because Your Honor flagged this issue and it's an important one that the parties have raised.

No one prevented the Taylor parties from

exercising their drag-along rights if they wanted to exercise them. The Taylor parties said in their papers to Your Honor that we are seeking to nullify their drag-along rights. We never sought to nullify their drag-along rights. If they wanted to exercise their drag-along rights within ten days after the EIPA, hallelujah. We would have been delighted, because the drag-along rights would have resulted pretty much in the same spot that the tag-along rights would accomplish.

So, no one prevented Mr. Taylor or his entities from exercising the drag-along rights under the agreement. No one was seeking or is seeking to nullify his drag-along rights. It is that the Taylor parties refuse to admit that those drag-along rights were triggered or that they refused to exercise the drag-along rights. They refused. I can't force them to do something which they've refused to do in terms of their drag-along rights. But because, Your Honor, Section 10.7 says that if the selling partner does not exercise drag-along rights, which is where we are here today -- as we are standing here today, the Taylor parties have not just not exercised them, they've refused to acknowledge that they exist, so they haven't exercised them.

Then -- and now we go back to 10.7(a) -- "then each Limited Partner shall have the right to elect to participate in such Tag-Along Sale ...." So I would

respectfully submit, Your Honor, that the interplay is clear that if, as is the case here, the Taylor parties refused to acknowledge the existence of a control sale, thereby refusing to even acknowledge that they have drag-along rights today and thereby refusing to exercise their drag-along rights under 10.7(a) and otherwise, then at that point they've simply refused to exercise their rights and they cannot block us, block my client, Orbit Sports, from exercising its tag-along right which flows therefrom.

So, I hope I've answered Your Honor's question about the interplay.

Peter, could we now go back to the next slide. Thank you.

This brings us to the definition, Your Honor, of "control sale." The definition as we've highlighted here of control sale has a number of what we believe are critical aspects. "A sale, exchange or other disposition," so let me stop there. That of course means that it doesn't have to be a sale *per se*. It can be an exchange or another disposition which we'll get to in more detail, but it doesn't have to be a sale.

Let's stay with "other disposition." There's a parenthetical, Your Honor, on the screen. It says: "(For cash or property with a discernible cash value)." So the other disposition does have to be for, you know, an exchange

of money or value. It cannot be a gift. So we've eliminated gift.

Then we go on: "By one or more members of the Taylor Group." Here's that same language that we saw, Your Honor, in 10.7. Again, it doesn't say: "By the general partner of the general partnership interests." It says: "By one or more members of the Taylor Group," which we clearly have here. We have three members of the Taylor Group in fact. Then it goes on to say: "In a single transaction or series of related transactions." And then it says: "To any Person who is not a member of the Taylor Group" -- which the buyer is not a member of the Taylor Group -- "of Partnership Interests." Not just general partnership interests, "of Partnership Interests." And then it says: "Which include a majority of all the General Partnership Interests." So it could be a sale of partnership interests. It could be an exchange or other disposition of other interests. It could be a combination, as long as it is in a single transaction or a series of related transactions.

Now, let me ask my colleague Peter if you could just go to the next --

THE COURT: Just one question. I want to be sure --

MR. SCHAFHAUSER: Of course.

THE COURT: -- I understand your position --

MR. SCHAFHAUSER: Absolutely.

THE COURT: -- here. Are you suggesting that control sale somehow might mean a sale of a minority of all the general partnership interests?

MR. SCHAFHAUSER: I am not suggesting that. What I'm suggesting, Your Honor, is that a minority of interests can be transaction number one. Another transaction that's part of a series of related transactions can be transaction number two. Another transaction that's part of the series of related transactions can be transaction number three. Another one can be transaction number four. And then you get to the majority, as long as it includes a majority of all the general partnership interests at the end of this process.

So what I'm suggesting is that there can be several -- well, let me use the word that's actually in the EIPA. There can be several tranches, there can be several tranches, and that in fact is exactly what we have in this instance. There is a set of tranches. Let me -- and again, I want to respond to Your Honor's point.

Could you please -- and we'll come back to this, Your Honor, this definition.

THE COURT: One more question, just a real quick one, I think.

MR. SCHAFHAUSER: Of course.

THE COURT: When I'm reading "general partnership interests" there, I give partnership interests as it's used with respect to general the same definition that partnership interests is given in the definition section of the Partnership Agreement, correct?

MR. SCHAFHAUSER: Yes. Both of these are defined terms. The answer is yes. There's a partnership interest which includes -- it could be limited partnership interests or general partnership interests, and then general partnership interest is a subset of all partnership interests. And actually to illustrate and highlight that point --

If you could, Peter, go to the chart, which is Exhibit G, and then we'll come back to this.

Your Honor, I wanted to show you -- and this is actually something that was put into the record by the Taylor parties. You see at the top it says "Document 23-3." I believe it's Mr. Merrill's second affirmation and it's Exhibit G thereto.

And this Exhibit G, Your Honor, what we're looking at here is an exhibit to the EIPA, and this is frankly a wonderful illustration of what we've been talking about, the interplay between partnership interests and general partnership interests.

So what this shows is the series of transactions --

THE COURT: Just for clarification, not to interrupt -- and I'm sorry about this --

MR. SCHAFHAUSER: I appreciate the questions.

THE COURT: -- I think Exhibit G is to the Partnership Agreement. I think this is Exhibit C to Mr. Merrill's declaration. Let me get a nod. Yes, I got a thumbs up over here.

MR. MERRILL: Yes, that's correct.

THE COURT: Okay. Got it.

MR. SCHAFHAUSER: Thank you, Your Honor. I --

THE COURT: No.

MR. SCHAFHAUSER: I mangled it.

THE COURT: It's all right.

MR. SCHAFHAUSER: I appreciate it. And I stand corrected and it won't be the last time, I'm sure, that I stand corrected, but I want to get it right, so thank you for that.

This document, as I understand it, though, was and is an exhibit to the EIPA. And this document, Your Honor, shows the transactions that are outlined in the EIPA.

By the way, every one of these transactions, to state the obvious, is between the same sellers and the same buyer, same lawyers, same documents, same conditions, same

reps and warranties, same closing conditions, same everything. It's all in one integrated document, but I digress.

Looking at this schedule, Your Honor, Taylor Sports Group at the very top left is shown to have an 8.24, approximately, percent GP interest, a general partnership interest. Then you have Taylor Corporation with a 48 percent or so interest, a total interest of that amount, meaning the -- essentially, as I read this, the limited partnership interests are approximately 92 percent of the total partnership interests, and the general partnership interests are approximately eight percent of the total partnership interests.

And what this shows, Your Honor, is the series of transactions outlined between the buyer and the Taylor parties. What it shows is that at the closing -- and there's a reference -- there's a column for closing units, 20 percent, at the closing 20 percent will be sold.

But by the way, as a condition of that closing, options will also be conveyed, irrevocable options that the buyer will have the right to exercise either simultaneously or at any period of time as long as they're in the same sequence up until certain option exercise dates set forth in the EIPA, and those options will entitle the buyer to obtain the remaining interest. You see it here: First tranche, 20

percent, so then the buyer is at 40 percent. Second tranche, if you total it up at the bottom, it's 39.999999, and now we're talking about 80 percent. And then the third tranche, the final tranche, is the remaining 20 percent. So this series of related transactions that is outlined in the EIPA -- again, this is a longer question than perhaps Your Honor bargained for, but it results in 100 percent of the partnership interests being in the control of the buyer. That's the end result of this series of related transactions.

Peter, could we now go back to the slide we are at, please. Thank you.

So I was at 1.9C, Your Honor. We were talking about a single transaction or a series of related transactions. What we just saw was that 8.2 percent of the partnership interests are general partnership interests. The Taylor parties seem to suggest, if I understand the argument correctly, that it's only when that 8.2 percent is sold that there's a control sale, but that's not what this document provides. It talks about a series of related transactions of partnership interests, which we clearly have here, which include a majority of all the general partnership interests, which we also will have here, because 100 percent of the general partnership interests will be conveyed under this EIPA as well.

Now, Your Honor, what we saw in the defendants' submissions is -- and I alluded to this at the outset of my remarks -- is an effort to frankly overlook the phrase "single transaction or a series of related transactions." So what this slide shows is how they've defined what a control sale is in their briefs. And we highlighted this in the briefs, but this really illustrates it perfectly.

What the defendants argue is that a control sale means a sale, exchange or other disposition of a majority of all the general partnership interests. That's their position. Their position is unless and until there is a sale, exchange or other disposition of a majority of the general partnership interests, there is no control sale. And for that reason they argue that it's only the second tranche -- that exhibit we just looked at. It's only the second tranche that triggers when a control sale occurs. But again, if you look at the highlighted sections, that omits the fact that a control sale includes not just a majority of all general partnership interests, but Partnership Interests, capital P, capital I, and those can be sold, exchanged or otherwise disposed in a single transaction or a series of related transactions, which is exactly what we have here.

If Section 1.9C, Your Honor, were intended to provide that a control sale only occurs upon a sale of the

general partnership interests, that's what it would say. It would have been so easy to say in a document a control sale occurs only when general partnership interests are sold, or a control sale occurs only when the general partner is replaced. That's their position, but that's not what the document says. Their position, the defendants' position, is unsupported by the words -- the plain language set forth in 1.9C.

THE COURT: You're arguing an option is a disposition, correct?

MR. SCHAFHAUSER: We are arguing that an option is a disposition, Your Honor.

THE COURT: All right. I take it you're going to get to that in a future slide here. You don't have to now.

MR. SCHAFHAUSER: Thank you. And again, trying to be responsive to Your Honor's question.

Let's just jump to the next slide, please. One more.

So, I wanted to go through some of these points in response to Your Honor's question.

So, the initial transaction -- and by the way, it's defined in the EIPA, as well as even in Mr. Maczko's declaration to this Court, which is an interesting declaration and we'll get to it. But even Mr. Maczko in his declaration refers to the initial transfer, thereby

suggesting that there are other transfers that are contemplated. And in fact, there are other transfers contemplated, because the EIPA itself provides -- there's a definition in the EIPA that talks about Contemplated Transactions, capital C, capital T, and that definition includes all of the transactions that are laid out in the EIPA, not just including the sale of the initial 20 percent, but the option -- the options that are conveyed at closing as well.

And so to get back to Your Honor's question about options, at the closing, not only will there be a sale of 20 percent -- and obviously a sale is a sale within the meaning of the Partnership Agreement, so we have a sale of partnership interests at closing. We have a sale of partnership interests at closing within the meaning of Section 1.9C.

But at closing what we also have is, to Your Honor's question, we have another disposition. We have another disposition of the remaining interests. And how do we have that? The two components of this agreement go hand in hand. There would be no 20 percent purchase if the options were not also conveyed, and vice versa. They go hand in hand and the document, the EIPA, clearly shows that. They go hand in hand. The options, in fact, are conveyed in consideration for the payment of 20 percent of the

enterprise value net of debt. So, the options are going to result -- along with the sale of the initial 20 percent -- are going to result in the payment to the Taylor parties of hundreds of millions of dollars, 20 percent of 1.5 billion being 300 million, less the debt, so there's a credit for that, but certainly hundreds of millions of dollars. These options are not a gimme, they're not a freebie, they're not a throwaway, they're not inconsequential. What the Taylor parties are conveying at closing is the right for the buyer at anytime, that day, the next day, the next day, or anytime thereafter through the option exercise period to acquire control of the Minnesota Timberwolves and the Lynx by exercising those rights. They are -- I mean, to state that they are valuable rights would be a gross understatement, Your Honor.

THE COURT: So that's defining disposition by reference to the facts of the case, fair enough?

MR. SCHAFHAUSER: Well, we have the facts of the case, but we also have, I submit, the law on our side, as well as the Partnership Agreement itself which we'll get to.

THE COURT: What's the one-sentence definition of disposition that supports your understanding of that provision?

MR. SCHAFHAUSER: The one -- well, the one-sentence definition of disposition, it actually relates

to the three words. It says "sale, exchange or other disposition." I'm struggling to just limit it to one sentence, because there are a number of definitions here that go into it, and here we go.

So, a sale. A sale is a transfer of property or title for a price. An exchange. Again, an act of transferring interests, so we have the common element of transfer. A transfer. Any mode of disposing -- there's the word "disposing," Your Honor -- of or parting with an asset or an interest in an asset. And what we have here is, we have a transfer of interest. We have a disposal of a bundle of rights with respect to the Taylor parties' remaining interests.

So, looking down at the next portion of this slide, Your Honor, "other disposition" is, again, any other mode of disposing of or parting with property or an interest in property, provided there is monetary or other consideration. Here we have monetary or other consideration. There will be hundreds of millions of dollars of monetary consideration.

And then, Your Honor --

Could you, Peter, just go to the transfer definition in the Partnership Agreement, because I promised His Honor to talk about that as well.

THE COURT: So can I jump to a question before you

get there?

MR. SCHAFHAUSER: Of course.

THE COURT: Sort of jump ahead?

MR. SCHAFHAUSER: Your Honor, you wear the black robes. You can ask any question.

THE COURT: Well, I don't mean to -- is transfer used in the definition of control sale?

MR. SCHAFHAUSER: I actually welcome that question because I was going to get to that point, because the straight answer, which of course is the only answer to ever give anyone, and certainly Your Honor, the definition of transfer as set forth in 1.27 of the Partnership Agreement is not a part of control sale per se. It's not, okay?

And where that is relevant and where I was going to get to that is that the defendants have made an argument -- which we'll get to momentarily, but the defendants have made an argument that Section 10.7 provides that it's subject to Section 10.1, subject to 10.1. Well, 10.1 of the Partnership Agreement provides that no transfer -- there's the word again -- no Transfer, capital T, will be effective under certain conditions: can't violate the securities laws, can't have tax consequences for the partnership, a number of conditions, including NBA approval, which they focus on, but there are a number of conditions in 10.1. They only focus on one. But again, the

definition of transfer is not *per se* a part of the definition of control sale.

What I do submit to Your Honor, however, is that the definition of transfer which we have on the screen now is relevant, because the word "sale" involves a transfer, the word "exchange" involves a transfer, and the words "other disposition" involves a transfer, and the Taylor parties are saying you have to have a transfer. So then the question arises, well, what is a transfer? It just so happens that we do have a definition of transfer in the Partnership Agreement and that definition is very broad. The definition includes -- and you see the bolded language. We can read the whole thing, but the bolded language talks about an encumbrance, a pledge, hypothecation, or any other disposition. So here you have -- there's the word "disposition," but you have encumbrance, pledge, hypothecation.

Now, why am I pointing out these words, Your Honor might well ask me, and the answer, of course, Your Honor, is that the EIPA, if nothing else, with respect to the 80 percent that we saw in that exhibit a few moments ago that will not be, quote, transferred at closing through a sale, will nonetheless be transferred within this meaning in the sense that there will be an encumbrance on the Taylor parties' ability to convey or otherwise dispose of those

interests.

What am I saying? Because of the EIPA, Mr. Taylor cannot tomorrow morning go out and say, "You know what? I found a buyer who wants to buy the Timberwolves for 2.5 million. I'm just going to sell it to that buyer." No, because the EIPA will have bound him to give options to the Rodriguez/Lore group for 1.5 million. In other words, there's a cap, there's an encumbrance, there's a limit, there's a price established that will be established not just on the date of closing, but through all periods of time until the options are exercised. It's an encumbrance. It's also a limitation on any other disposition by the Taylor parties of their interests other than outside of the four corners of the EIPA that they signed. So there is a sale, which is a transfer, at the closing, but there certainly also is, Your Honor, a transfer within this meaning of an encumbrance, pledge, hypothecation or other disposition.

And again, you are correct that the word "Transfer," capital T, does not appear in Section 1.9, but what does appear in Section 1.9 are three words: sale, exchange, or other disposition, which the Taylor parties are arguing require transfers. Well, if they require transfers, here's the definition of transfer. And even under that definition, which is their word -- they like the word "transfer" -- if it does require a transfer, we're within

the four corners of Section 1.27 of the Partnership Agreement in terms of a transfer.

Your Honor, I touched on this a couple of moments ago, but I wanted to highlight this again while we're on this definition.

At the closing, the buyer will have the ability to control the future of the team. It's within the buyer's option -- there's a word -- it's the buyer's option, the buyer's sole discretion, the buyer's irreversible right, to say at any time at the closing, or the day after the closing, or the next day, or any time thereafter, "Mr. Taylor, I require you to sell us the remaining interest in the Timberwolves for an enterprise value of $1.5 billion. We require you to do it." And Mr. Taylor at that moment cannot say, "Sorry. I don't want to do it. I want to see if there's another buyer. Sorry. I don't want to do it. I don't think it's the right price." That's a powerful right that is going to be conveyed at closing.

Of course, the Taylor parties say, "Oh, options. You know, it's" -- I think they quoted a song *Nothing Plus Nothing Equals Nothing* (sic), or -- I think I mangled that, but the Billy Preston song from the early '70s. These options are not nothing, Judge. These options, by the way, have been broadcast to the world. We can all read what the Taylor parties and what the buyer parties are saying, that

there is a transition of ownership that is encapsulated here, and here we have a few of them: The Taylor parties' public statement on May 14th that Mr. Taylor has reached an agreement regarding the sale and future ownership of the Timberwolves and the Lynx.

THE COURT: So I've read this. Let me just make sure I understand how it fits within your argument.

MR. SCHAFHAUSER: Yes.

THE COURT: If I understand it correctly, this only fits in as extrinsic evidence if the Partnership Agreement is ambiguous and I've got to look somewhere else to try to interpret it. Is that about the size of it?

MR. SCHAFHAUSER: I think Your Honor has said it perfectly. That is correct. So let me -- and I understand Your Honor's point, so we'll move on from that.

THE COURT: But you're suggesting the Partnership Agreement is not ambiguous.

MR. SCHAFHAUSER: I am suggesting that it is unambiguously clear that the Taylor parties have proposed to enter into a control sale, and because they have proposed to enter into a control sale and because they have not exercised their drag-along rights, we have tag-along rights that have been triggered. So yes -- I want to be clear.

THE COURT: Okay.

MR. SCHAFHAUSER: My position is that it's clear

and unambiguous that my client should prevail and will prevail and that there is a likelihood at the very least of success on the merits. That is my position.

They've made a cross -- a motion to dismiss in which case, you know, my colleague will address that, but for purposes of this motion, yes, Your Honor, that is our position.

THE COURT: Okay.

MR. SCHAFHAUSER: So let me, you know, move away from extrinsic evidence in that light and go back to -- and I think Mr. Krauss will be addressing it in terms of that motion. That's why we have that slide in here. So let me go back.

Peter, I'm sorry to keep jumping around, but let's go back to where we were. Thank you.

All right. So let's go to the next one, please, Peter.

Your Honor, I just wanted to address a couple of other things on the likelihood-of-success component and then we'll move on to irreparable harm and the other elements.

Even the word "tranches" demonstrates that the transactions set forth in the EIPA are related. By definition a tranche is related to another tranche. By definition the transactions set forth are related.

THE COURT: The word expresses a sequence.

MR. SCHAFHAUSER: The word expresses -- exactly right. The word expresses a sequence.

In addition, you have Mr. Maczko's declaration that I touched on a bit earlier. In Mr. Maczko's declaration he says that -- and I talked about his use of the phrase "initial transfer" earlier, but let's talk about his other statements.

In paragraph 7, Mr. Maczko says that: "The EIPA also provides for" -- and here's the phrase -- "a series of call options in Article VI," a series. There it is. It's a series of related transactions for all intents and purposes.

Then he says in the next sentence: "Under NBA rules, the inclusion of these Call Options is also subject to NBA review and approval, which is currently ongoing."

Why would that be, Your Honor, the question must be asked of the Taylor parties. Why would it be that the inclusion of the call options is subject to NBA review and approval? If these are not related transactions, they wouldn't be subject to NBA review and approval. If these were not intended to lead to control to the buyer, the NBA would have no interest in the inclusion of the call options. But even Mr. Maczko in his declaration says, yes, the inclusion of the call options is also subject to NBA review and approval at this time, not in the future, at this time.

Could we go back, Peter, to 10.7(b).

Your Honor, there's a couple other things that we should note about the language of 10.7(b). Again, courts look at the plain language, so let's look at the plain language of 10.7(b) in the context of an argument by the defendants, again, that there are no rights that are triggered unless and until a sale is effective. Let's look at 10.7(b).

It says: "The Selling Partner shall provide each of the Tag-Along Partners with written notice of the proposed Tag-Along Sale," meaning a Tag-Along sale that will occur in the future. It's proposed. By definition it hasn't happened yet.

Then it says: "The Sale Notice shall describe in reasonable detail [] the Partnership Interests to be sold." Again, they haven't been sold. Sale hasn't been effective. Disposition hasn't been effective. It's in the future. It's to be sold by the selling partner.

Then it talks about the name of the proposed buyer, not the new limited partner who just closed on a deal, the proposed buyer, who then is defined in that same section as the "Prospective Purchaser." Again, not the purchaser, not the newly admitted limited partner, not the newly appointed general partner. It says the "Prospective Purchaser."

Then it talks about the "proposed date, time, and

location of the closing of the sale." And then it talks about "if not yet executed any form of agreement proposed to be executed ...."

Why do I focus on these prospective words, Your Honor? Because again, the Partnership Agreement lays out a process for both tag-along rights and drag-along rights. It's as if, you know, we are running a race. There's a starting point to the race, there's a finish line to the race. The starting point is when a control sale is proposed. That's the starting point. We're off to the races. The control sale has been proposed. The finish line is when there is a closing of the control sale, but in between those two periods we're running the race. We're going -- the proverbial race. We're going through the tag-along right process and this is one feature of the tag-along right process in 10.7(b), and this process, as we talked about earlier, just happens to be within ten days following the execution of any definitive agreement. All of this has to happen.

Can we now go to the next slide, Peter.

The next slide, which happens to be the next provision in the sequence, 10.7(d), Your Honor, talks about what needs to happen after what we just saw in 10.7(b), and that is that "the Tag-Along Partner [must] give written notice to the Selling Partner of such election and

specifying the Partnership Interests" -- again, it proposes to sell, it proposes to sell. That's what is contemplated. And here again you have the bolded language "proposed Tag-Along Sale," "contemplated Tag-Along Sale."

Again, the rights are in play, the rights are in existence, the rights have been triggered, and the Tag-Along Sale has not closed, because the plain language talks about proposed, talks about contemplated, talks about prospective, talks about to be sold, all prospective language.

So, what happened here? Well, what happened here, Your Honor, is that the Taylor parties --

Let's go back to 10.7(b).

Under 10.7(b) they were required to provide a notice, a sale notice, within ten days following the execution of the definitive agreement, and they provide a notice of sale notice and they said -- as I mentioned earlier, they sent a letter saying that there is no control sale at this time.

Let's now go back to 10.7(c). 10.7(c), Your Honor, just so we are not in a position where we waived any rights, we actually sent a tag-along notice. My client sent a tag-along notice to the Taylor parties under 10.7(c) and notified the Taylor parties of its exercise of its tag-along rights.

And what has happened in response? Well, let's go

to the next slide, because again, we're talking about a continuum of rights and obligations, all of which precede the closing of the tag-along sale.

Here's 10.7(d). Again, we're still talking here about a prospective purchaser, still talking about a contemplated tag-along sale, so we're still talking about a future event. Hasn't closed, hasn't become effective. As the Taylor parties keep talking about, "Oh, it's not effective." Well, 10.7(d) doesn't require effective. It talks about rights with contemplated sales. And 10.7(d) provides an affirmative obligation on the selling partner, namely the Taylor parties, to "use commercially reasonable efforts to obtain the agreement of the Prospective Purchaser to the participation of each Electing Partner in such contemplated Tag-Along Sale."

So, again, what has happened here? What has happened here is that no such efforts were undertaken. The Taylor parties certainly don't say anywhere in their three briefs to Your Honor that they used commercially reasonable efforts under 10.7(d). To the contrary, their efforts have been devoted to trying to argue that there are no rights to speak of. That's been their effort.

Let's go to the next slide, please.

Another provision of 10.7(d), subsection (ii). Here's the participation procedure. Again: "In the event

the Prospective Purchaser" -- so again, we're talking again about a future event, still a prospective purchaser, still not effective, still not closed, prospective purchaser -- "In the event that the Prospective Purchaser elects to purchase less than all of the Partnership Interests to be sold by the Electing Partners," then in that event, Your Honor, there is a formula as to how the selling interests are to be divvied up and conveyed.

And this is very important, because this goes to this -- respectfully, this outlandish comment in the papers that my client is seeking a windfall. Nothing could be further from the truth. My client is seeking enforcement of the provision that I'm about to read to Your Honor, 10.7(d)(ii)(A):

"First, each Electing Partner shall be entitled to sell the full amount set forth in their respective Tag-Along Notice, which for the avoidance of doubt may be all of an Electing Partner's Partnership Interests."

That's first. That comes first.

And then second, once that happens there's a mechanism in which the Taylor parties get to sell the remaining portion so long as each electing partner has been given the ability to sell the full amount if they wish to sell the full amount of their partnership interests.

So first comes the electing partners. Second

comes the Taylor parties. That's the sequence in the Partnership Agreement. What the Taylor parties are seeking to do here is to switch that. First comes the Taylor parties and second comes everyone else. First they get $300 million net of debt and we can wait for three years. They want to switch the sequence. They want to put first the selling partner and second each electing partner. They want to flip this Section 10.7(d)(ii) on its head in contravention, I respectfully submit, of the plain language of the Partnership Agreement.

But the Partnership Agreement is even more striking and this really gets to why it is so clear that this transaction cannot proceed unless and until the limited partnership's tag-along rights are honored.

Could we flip, please, Peter, to the next slide. Thank you.

10.7(d) sub-romanette (iii) says:

"The Selling Partner shall not (directly or indirectly) Transfer any of its Partnership Interests to any Prospective Purchaser pursuant to such Tag-Along Sale," and you can read the rest of the words, but basically it's unless the tag-along rights and unless the tag-along procedure is honored. It specifically says that the Taylor parties shall not transfer any of their partnership interests to any prospective purchaser unless the tag-along

rights are honored. A clearer and more express prohibition against what is proposed to happen here could not be fathomed than what is set forth in 10.7(d)(iii).

Let's go to 10.1, please.

Your Honor, there's a second provision that relates here and that's 10.1, and we've highlighted some language which I'll get to momentarily, but for the moment I want to actually focus on the first sentence, which says:

"A Partner may not Transfer" -- again there's the capital T word -- "Transfer or assign all or any part of such Partner's Partnership Interest except in accordance with this Agreement."

It's our position, Your Honor, for the reasons that I've outlined, that the proposed transaction here is not in accordance with the agreement. It seeks to turn the agreement on its head. It seeks to vitiate my client's rights. It seeks to erase the words "series of related transactions" from Section 1.9. It seeks to change the "First" and "Second" in Section 10.7(d) upside down. So, as a result, for that additional reason, 10.1 prohibits any transfer except in accordance with the agreement.

Now, Your Honor is going to hear the argument which we saw in the submissions by the Taylor parties that 10.1 is relevant for a different reason, and that is, you know, what we were talking about a moment ago, and it's the

highlighted language that no proposed transfer -- by the way, let's stop right there. It says "No proposed Transfer," so it's a proposed Transfer, capital T, and then it lays out a number of things that are essentially preconditions to the effectiveness of the transfer. So 10.1 doesn't say that there can be no proposed transfer at all. It says the proposed transfer will not be effective unless certain things are undertaken, so let's talk about what those certain things are:

"[F]ails to comply with all applicable state and federal securities laws." An unremarkable provision. Hasn't been mentioned in the Taylor parties' papers. They haven't argued: "Oh, this transaction will not be effective because we don't have opinion of counsel as to whether it complies with state and federal securities laws." Why not? Why are they not focused on that? Well, maybe the Taylor parties will answer why they're not focused on that.

Next one: "[W]ill have an adverse impact on the ability of the Partnership to be taxed as a partnership for income tax purposes." No mention of that in the papers.

Next one: "[W]ill result in a Limited Partner being exposed to liability as a general partner." No mention of that.

The point is there is only one and only one provision here that the Taylor parties mention, and that is

that no proposed transfer will be effective unless and until NBA approval is obtained, but that's fine. That's unremarkable. That's consistent with any transaction that has contingencies. Section 1.9C doesn't say that you cannot have a control sale unless all transactions have zero contingencies. It doesn't say that a control sale cannot have a financing contingency. It doesn't say that a control sale cannot have a contingency to comply with federal and state securities laws. It doesn't say that you can't have a contingency for compliance with tax law. It doesn't say that a transaction must be noncontingent to qualify as a series of related transactions that triggers a right.

So respectfully, Your Honor, the idea that one contingency out of a whole realm of contingencies -- which, by the way, exists not only in 10.1, but also exists in the EIPA. There are contingencies in the EIPA as well which any buyer would put in a document, which again is unremarkable. You purchase a house. There are contingencies. That doesn't mean that the agreement to purchase a house is void. It doesn't mean that the agreement is not worth the paper that it's written on. It means that there is a title contingency. There's -- Your Honor gets the point.

10.1 --

THE COURT: Let me suggest that because we've been at this for over an hour now talking about the merits, which

is good because it's sort of the focus of the inquiry here, but let's shift to irreparable harm if that's something you intend to cover and perhaps cover a bit more quickly.

MR. SCHAFHAUSER: Thank you, Your Honor. Appreciate it.

Your Honor, there are two different forms of irreparable harm that we face here.

The first form of irreparable harm is that there are bargained-for rights that will be nullified, they will be undone, they will be vitiated, they will not exist for all intents and purposes if this transaction proceeds without my client's tag-along rights being honored. And the bargained-for rights, to be very specific, include four separate provisions, Your Honor, some of which we touched on already, but I'll just highlight them briefly.

We already talked about 10.7(d)(iii), which provides that the Taylor parties shall not transfer any partnership interest to any prospective purchaser unless and until my client's tag-along rights are first honored, so that's an express prohibition against a transfer by the Taylor parties. It's a bargained-for right.

Second bargained-for right, Section 10.1 that we also touched on a few moments ago. "Partner may not Transfer ... all or any part of such Partner's Partnership Interest except in accordance with this Agreement." May not

do it. Can't do it. That right goes away if this transaction closes without my client's rights being honored.

Article XVI of the Partnership Agreement talks about the consent of -- and now I'm quoting -- "All Partners" -- "Without the consent of all Partners, no amendment shall alter the allocation of partnership management responsibilities or control." I'm going to get to that in more detail momentarily.

But what goes along with that is Section 9.3, which provides that: "[N]o Limited Partner shall have the right to participate or interfere with the management or control of the Partnership business."

Well, in fact, the minute that this EIPA closes, absent this Court's intervention, those two provisions will be violated as well, because at the closing the buyer will be designated as the alternate governor. Now, the defendants say that the alternate governor can be terminated by Mr. Taylor at will. That may be so, but unless and until the alternate governor is terminated, he's the alternate governor, and if Mr. Taylor is not available, he acts under the Constitution of the NBA that Mr. Maczko put forth, a detailed constitution.

THE COURT: That's the more persuasive argument, right, that being an alternate governor gives one no control over the franchise -- over the partnership, I should say.

What's the response to that?

MR. SCHAFHAUSER: The whole point of being a partner in a partnership that controls the Minnesota Timberwolves and owns the Minnesota Timberwolves, Your Honor, is to be empowered to act on behalf of an NBA team. That's the whole point. I respectfully submit -- and maybe I'm overstating. I shouldn't say no one, but virtually no one that I can imagine would buy the partnership interest of the Minnesota Timberwolves Limited Partnership without aspiring to be the governor empowered to act on behalf of the Minnesota Timberwolves. The whole point is to be the governor, or the alternate governor in this instance, in which event Mr. Taylor cannot act.

But you have something else as well. You have an exhibit to the EIPA which provides for an advisory board. And again, the Taylor parties now scoff that, oh, it's meaningless and, you know, there's no real control. Well, then if that's so, if the appointment as alternate governor is so meaningless, and if the appointment to the advisory board and the creation of an advisory board that has never existed in the history of the Timberwolves until now, if that's so meaningless, then why did the parties see fit to spend what undoubtedly were countless hours and countless thousands of dollars negotiating those provisions? They were negotiated, Your Honor, because when one looks at the

provisions in detail with a nod and a wink, with a nod and a wink, what Mr. Taylor is telling the buyer is that he will not take actions without their consent with a nod and a wink.

THE COURT: When you say "a nod and a wink," I assume you're referring to the fact that there's an advisory board, but that the advisory board has no veto or consent power.

MR. SCHAFHAUSER: That's right. I admit to Your Honor, as I must, that there are words in the document which profess to say that the advisory board is merely a consultative body and in and of itself does not divest Mr. Taylor of his authority -- or rather Taylor Sports Group of its authority as general partner. I readily concede that that's what the words on the page seem to indicate.

But, but, Your Honor, again, never before in the history of the Timberwolves has Mr. Taylor seen fit to propose an advisory board nor has -- he bargained for it as part of the series of related transactions, Your Honor, that are in place here. What he has done and what he is doing and what is abundantly clear is that he is providing a measure of control to others and that he himself is no longer going to have unfettered, unfettered, prerogative to act. That's what is manifestly clear.

So, I know I've gone on for a while and you asked

me to be more prompt in going through these points, so I just wanted to go back to the main point.

The main point, Your Honor, is that the first of the two forms of injunctive relief that are in play here is that there are express prohibitions in the document that would be violated, express prohibitions against a transfer, express prohibitions against sharing management authority, that we submit would be violated. Where there are such prohibitions and where there is a potential transaction that would jeopardize those prohibitions, courts do act. Courts have seen fit to act.

So we have cited, Your Honor, a number of cases. I would highlight only a couple for the moment given the interest of time.

In the ***EIG Global Energy Partners*** case that we cited, the court in that case, Your Honor, was dealing with a prohibition in the operating agreement there against transactions -- and I'm quoting page 7 of the court's decision, and I quote:

"The Court finds that Plaintiff is likely to suffer irreparable harm if the acquisition goes forward in apparent violation of the LLC Agreement. Because complex business transactions cannot be simply unwound, bargained for rights to prevent changes in business structure and ownership are irreversibly lost after a

transaction breaching those rights occurs."

The court goes on to say:

"Here, Plaintiff is asserting a right to prevent a transfer in the control of TAMCO, its partner [], without supermajority approval. If this right is not given interim protection, it will be lost once the announced acquisition [] is consummated. Consequently, the Court finds that Plaintiff is likely to face irreparable harm if it is not granted preliminary relief."

Your Honor understands the analogy we seek to draw, so let me move on to the next case very quickly, the ***Alcatel*** case. The same kind of issue. In that case, on page 38, the court says, and I quote:

"The loss of Alcatel's bargained-for minority rights independently satisfy the irreparable harm requirement. Alcatel negotiated for particular contractual rights [...] which, if breached, would constitute irreparable harm," and then it cites other cases.

We also, Orbit Sports, bargained for contractual rights which, if breached, would constitute irreparable harm.

That brings me, Your Honor, to the second component of our irreparable harm showing, and that is, Your Honor, that there is no adequate remedy at law here, because we are talking about such enormous, frankly, sums of money

in dispute that it is highly unlikely that absent relief from this Court that there will be a full recovery.

Your Honor is familiar with the cases, of course, that we've cited, but I do want to note one case in particular, and that is the -- forgive me. That is the case, Your Honor, in which -- the ***UnitedHealthcare*** case, a case decided by Judge Rosenbaum of this court. There was a dispute involving the then chairman, or I should say the former chairman, of UnitedHealthcare Group. He asserted that he was the holder of rights and interest north of a billion dollars, and Judge Rosenbaum in that case refers to that assertion that he had north of a billion dollars. It's on page 17 and page 18 of Judge Rosenbaum's decision, but this is what Judge Rosenbaum said in that case. What he said was that:

"Under appropriate circumstances, an injunction is proper even where only money damages are sought" -- which by the way, we're not only seeking money damages, but -- "even where only money damages are sought. In such cases, a court must consider two factors: the non-movant's resources and the potential magnitude of eventual damages." And then this is what he says, Your Honor.

Of great resonance in this case where we are talking about Glen Taylor, I admit we all see what the press says about his resources, but this is what the court said

with respect to an alleged billionaire in the ***UnitedHealthcare*** case:

"The Court" -- and I'm quoting at page 14 now. "The Court finds that while Dr. McGuire's resources are great, the potential damages may be even greater."

And on that basis, Your Honor, Judge Rosenbaum determined that there was irreparable harm shown because there was not an adequate remedy at law, and he therefore -- interestingly enough, he therefore enjoined the release of certain property held by Dr. McGuire so that the plaintiffs in that case would have an adequate remedy at law if they prevailed at the end of the case.

Here, Your Honor, we have a situation where -- and noted in the papers, this actually is not the only lawsuit that Mr. Taylor is involved with. There are other lawsuits of record and, you know, we've cited them in the papers. He's being sued for what appears to be more than a billion dollars in another lawsuit. He admitted to my client -- and this is undisputed. He hasn't denied it, hasn't submitted an affidavit in response. He admitted to my client he needed the money in 2016. He admitted to my client that he needed the money when he structured the transaction the way he structured it now.

And beyond what Mr. Taylor might have said, moving beyond what he said, just looking at the structure of the

transaction, why would the owner, Your Honor, I respectfully ask, why would the owner of an NBA team, if he didn't have liquidity issues, if he didn't have, you know, issues, why would he structure a transaction in this way whereby he's selling a piece now, he's selling options now, he's tying his hands, he is tying his hands and giving irrevocable rights to someone else and they can exercise them, he's capping the amount at which he can sell his team? Why would he do that if he doesn't need the money immediately?

I respectfully submit that even the sheer structure of this transaction, which is a curious structure, demonstrates that Mr. Taylor, although he claims to be a billionaire in the -- I saw a *Forbes* reference -- the *Forbes* reference is not probative. The *Forbes* reference is hearsay. The *Forbes* reference is not dispositive of anything. What is dispositive is the admissions he made to my client, the fact that Mr. Taylor is in the public record as being sued by others for what appears to be more than a billion dollars, and the fact that if and when my client prevails in this case, the amount to which my client is entitled will potentially dwarf what Mr. Taylor will recover.

So for all of those reasons, Your Honor, just like in the ***UnitedHealthcare*** case that Judge Rosenbaum dealt with, Mr. Taylor -- and let me go back and quote it, just to

paraphrase it, but it has equal resonance here. Mr. Taylor's resources may be great, but the damages may be greater. That's exactly what was found with respect to Dr. McGuire, and that's exactly the situation that exists with Mr. Taylor. Interestingly enough, we presented these facts, we put in the record, we put in Mr. Orbach's declaration. Not a word in response by Mr. Taylor in a declaration, not a word saying, "Oh, I'm good for the money. No problem. No issue." Not a word in response, interestingly enough.

But there is another aspect of this, Your Honor, and the other aspect of it is that if Your Honor were to find -- for all the reasons I've submitted, we believe that the proposed transaction should be stayed and enjoined, but if Your Honor were to find that perhaps that form of relief is too draconian, there's another solution here. There's another aspect.

Your Honor sits, you know, and has equitable and broad powers. Your Honor could as an alternative direct that the sale does go forward and that the money is simply paid into court. If there is a dispute, although they haven't provided any evidence, Your Honor could simply direct that the money be paid into court. There would then be a recovery available if, as I believe will be the case, Orbit prevails.

I did not see -- and maybe I missed it, but I did not see any real response to that point, but there certainly is -- there certainly is precedent for that. In fact, again, Judge Rosenbaum in the case that I just referenced enjoined monies from being dissipated. The same could be done here.

Injunctive relief is in the public interest. We noted the cases. There certainly is a public policy and public interest in enforcing the sanctity of contracts and that's what we're talking about here.

If there is any issue, Your Honor, as to whether my client has an adequate legal remedy, courts also have found in some instances that expedited discovery is appropriate. We could have narrowly tailored expedited discovery. For the reasons that I've already submitted, I believe we've already carried the day. We've borne our burden. The Taylor parties have submitted nothing in response. But even if, even if there were an issue, Your Honor could and should in that instance direct expedited discovery as to the adequacy of Orbit's legal remedy.

So for those reasons, Your Honor, we respectfully submit that Orbit is likely to prevail on the merits, Orbit will suffer irreparable harm in the absence of relief from this Court, the balancing of the equities weighs in favor of Orbit, injunctive relief is in fact in the public interest

because we're talking about the sanctity of contracts.

Couple of brief points just to finish up, Your Honor. And by the way, I appreciate the opportunity you've given me. A couple brief points.

We have an entire section of our submission talking about an alternate remedy that's available, specific performance. Your Honor could -- and we respectfully submit should -- grant specific performance in the alternative. Specific performance is an equitable remedy, it is a remedy that the Court has available to it, and specifically, no pun intended, but specifically the performance that we are seeking is the no-transfer provisions that are baked into the contract. They are clearly set forth in the contract. Absent specific performance, it's as if those provisions didn't exist. So the Court can and should grant specific performance. We've cited the cases and I know that Your Honor has read the papers.

Last but not least -- and I'm sure my esteemed colleague will address this -- but we do not believe that a bond is necessary or warranted. Again, the Taylor parties have demonstrated zero prospect that they will be damaged. There has been no affidavit saying that anyone will walk away from this deal. Mr. Rodriguez has not said that he's going to walk away, Mr. Lore has not submitted an affidavit, Mr. Taylor has not submitted an affidavit saying, oh,

they're going to walk away. There's no competent evidence in the record that anyone is going to damage the Taylor parties in the least. And by the way --

THE COURT: I'm familiar with all of that. I think I have to -- and I'm making this as a statement more than a question -- I think I have to read the time-is-of-the-essence provisions and give them credit.

MR. SCHAFHAUSER: Very well. Very well.

Let me then say in response to that, Your Honor, that if -- if the time-is-of-the-essence provision were exercised and enforced, again, you've heard what I said, but if Your Honor is going to give credit, what will be the damage if it were enforced? At the end of the day the Taylor parties would be left with partnership interests valued at $1.5 billion. Doesn't sound like much damage. They bought those interests for far less. There's no damage. Even if this buyer were to walk away absent proof, absent competent proof by the Taylor parties that this is the only buyer in the universe that wants to buy an NBA team for that price, they still haven't sustained a showing of damage, because at the end of the day at very worst they would be left with partnership interests worth, according to the documents, $1.5 billion.

But again, there's another solution, and that is, if the Taylor parties say that they would be damaged, that

they're worried about this buyer walking away, the alternative is just put the money into court and let this dispute be adjudicated on its merits by this Court without my client facing the jeopardy that at the end of this process, if and when it prevails, it will be left holding the bag.

Because under the Partnership Agreement, to reiterate one more time, 10.7(d), my client is to get paid first, not second, first. That's what the document says. It says first. The electing partner gets paid first. The electing partner is my client, not the Taylor parties. So that provision, Your Honor, should be enforced.

Last point on the bond. Interestingly enough, after spending page after page after page saying there's no control sale, there's no drag-along rights, there's no tag-along rights, no rights have been triggered of any kind, these are not a series of related transactions. When it comes to talking about a bond, the defendants say that they should be awarded a bond that would prevent -- protect them against the loss of a $1.5 billion transaction, because a bond in that amount could result in losses -- and I'm quoting -- could result in losses to the Taylor parties exceeding $1 billion.

THE COURT: I get the point.

MR. SCHAFHAUSER: You get the point.

THE COURT: I get the point.

MR. SCHAFHAUSER: Thank you, Your Honor. I appreciate the time you've given. Thank you.

THE COURT: All right. We've been at this for a bit over an hour and a half now, and so here's what we're going to do. We're going to take a ten-minute break. We'll come back at a little after a quarter to and resume, Mr. Baudry, with your argument.

MR. BAUDRY: Thank you, Your Honor.

THE COURT: All right. We're adjourned for just a moment.

(Recess taken at 2:37 p.m.)

* * * *

(2:50 p.m.)

IN OPEN COURT

THE COURT: All right, everyone. Please be seated.

Mr. Baudry?

MR. BAUDRY: Thank you, Your Honor. May it please the Court and counsel. Alain Baudry and Courtland Merrill from Saul Ewing representing the Taylor party defendants.

First, I want to extend my appreciation to the Court and to opposing counsel for rescheduling the hearing at my request. I very much appreciate it.

What I'd like to do with my time this afternoon is

spend virtually all of it on -- either consider it our motion to dismiss or likelihood of success on the merits.

THE COURT: Check to see if your microphone is on there, Mr. Baudry, and if it's --

MR. BAUDRY: It wasn't. Thank you.

THE COURT: Okay, great. Thank you.

MR. BAUDRY: I'm going to essentially spend the vast majority of my time on likelihood of success or our motion to dismiss, because I think the Court has substantial expertise on irreparable injury and doesn't really need the parties' assistance in that regard.

I think what's unique in this case is the Partnership Agreement and how it interrelates with the NBA Constitution and the Equity Purchase Agreement pursuant to which my clients agreed in principle to sell all partnership interests in the Minnesota Timberwolves Limited Partnership to a company controlled by Marc Lore and Alex Rodriguez for $1.5 billion over a period of years through some grants of options that I'll talk about.

My clients own approximately 73 percent of the outstanding partnership units, including all of the general partner units, and it's the general partner units, as Your Honor is aware, which convey sole and absolute control over managing the affairs of the partnership.

The plaintiff is a limited partner, owns

approximately 17.3 percent of the limited partnership interests, and, as we pointed out in our agreement, if the second tranche is exercised, stands to realize a gain of about -- he's going to get about $237 million and a huge, huge return on investment.

Under the Purchase Agreement with the buyer, there's only one thing that the buyer is committed to do. The only thing that the buyer has contractually committed to do is to purchase an initial 20 percent limited partnership interest from the Taylor parties. There is no other contractually enforceable agreement by the buyer to buy any additional units. It's in its sole discretion. It has options. It's in its sole and absolute discretion whether to exercise the options. If it decides not to exercise the options, then the options essentially self-destruct and the rest of the options self-destruct, but if it decides not to, there's no claim that my clients would have against the buyer for breach of contract.

That decision, the first 20 percent, is subject to NBA approval and we are told now that that approval will not happen sooner than July 13th of next month. The remainder of the purchases may or may not happen depending on whether the buyer decides to exercise the options in its sole discretion and whether the NBA approves of those sales if it does happen. Each -- and I think this is clear -- each and

every option transaction, just like the initial sale, if it is exercised, has to be approved by the League or the transaction can't proceed. While that is an explicit condition in the Purchase Agreement, the Equity Purchase Agreement, it's also a requirement in the NBA Constitution. The League has to approve every single transfer before it can become effective. And it turns out that the NBA is a very exclusive club and it's very particular about who gets to join it, and we'll see the NBA Constitution lays out a very detailed process, vetting process, when someone applies to either purchase a limited partnership interest or a general partnership interest.

The Partnership Agreement provides when there's a control sale -- and we'll get into the definition, but that of necessity includes that a majority of the general partnership interests are sold, transferred, or otherwise disposed of to a new general partner, then the old general partner can force the remaining limited partners to exit at the same time. It's called the drag-along right.

And the theory of the drag-along right is pretty simple. If someone wants to buy an NBA franchise, a lot of times they want to bring in their own investment group and they don't want residual partners from the old regime, and without drag-along rights, then basically all partners would be able to hold the general partner hostage by saying, "We

won't sell," so that's a very important provision.

The Partnership Agreement also says if the general partner decides not to exercise the drag-along right, then in that case the limited partners still gets to decide whether they want to get bought out or not or remain in the partnership with a new general partner they didn't select, and those are called tag-along rights.

And the crux of this dispute, as is apparent, is that the plaintiff claims that the agreement pursuant to which the buyer buys a 20 percent limited partnership interest now with an option to buy remaining interests later constitutes a control sale, entitling it to an immediate buyout. And then it has an alternative theory, which is, okay, well, even if the agreement isn't a control sale, it's a proposal to enter into a control sale, and that's enough to trigger our rights to be bought out regardless of whether there ever actually is a sale of the majority interests of the general partnership units and regardless of whether the League approves it. So their position is the mere proposal to anyone of a proposal to sell a majority of general partnership units, they get cashed out now, and that's the crux of the dispute.

And to understand why neither of those theories make any sense and is in fact dead wrong, what I want to do is delve into the Partnership Agreement, the Purchase

Agreement, and even the NBA Constitution so the Court can understand the interrelationship between those documents.

With the Court's permission, I've given the Court a hard copy of this PowerPoint deck. It's called "Final Deck." And I also gave the Court what's called a "Build Up Deck." And the reason is, the slides we're going to look at have excerpted language from the partnership provisions that I want to focus on and you can look at the build up deck to see what language we left out or the totality of the language, and that's for everyone's convenience.

THE COURT: I've got the agreement in front of me.

MR. BAUDRY: Okay. So let's look at the first definition, "control sale." And "control sale" -- this is part of what's the third amendment to the Partnership Agreement, which was -- the third amendment was negotiated at the time the plaintiff entered into the partnership. So you have the original Partnership Agreement with a variety of provisions and then the provisions that we're talking about in large part today: drag-along rights, tag-along rights, control sale, were all contained in the third amendment.

And: "'Control Sale' means a sale, exchange or other disposition ... by ... the Taylor Group, in a single transaction or series of related transactions ... which includes a majority of all the General Partnership

Interests ...."

So, the first thing we have to do is unpack what is "sale, exchange or other disposition." And it is interesting, because as we heard during my colleague's opposing argument, the Partnership Agreement has a defined term, "transfer."

Courtland, can we see that?

(Pause)

MR. BAUDRY: No, that's from Section -- we want the other document.

MR. MERRILL: Excuse me.

MR. BAUDRY: We need to go down a little bit. There it is, 1.27, transfer.

So "transfer" is in the original Partnership Agreement, broadly defined. I'm not going to read it, but it's clearly broader than the four words that appear in "control sale," "sale," exchange or other disposition," and nowhere does the word "transfer" -- the answer to your question does the word "transfer" appear in the definition of "control sale" is very simple: No.

What's interesting is that in the third amendment there is use of the word Transfer, capital T, so that --

Could we see the next provision?

So in the very same third amendment where they were defining "control sale," they had a Section 10.9 about

transfer of interests of limited partners, and there you see the capitalized word "Transfer" appear several times: "The purported Transfer," capital T, "shall be null and void," and then there's the word "Transferred," all capital T.

And obviously the significance of that is that the parties negotiated this and clearly they intended that the definition of "control sale" was narrower than "Transfer," or they would obviously have just -- they could easily have just said a control sale means a transfer. They intended something, obviously, much narrower.

And, you know, one of the key questions is obviously what does "sale, transfer or otherwise disposed" mean. We cited the Court to the ***Bremer Bank*** case, Minnesota Court of Appeals case from 2018 which follows an early Fifth Circuit case construing the terms "sale, lease, license, or otherwise dispose" out of the UCC. And what the Fifth Circuit did and what -- the ***Bremer Bank*** case endorsed that approach -- is that using the doctrine of *ejusdem generis*, it said that when you have a series of words and the last word is and "including X," that "X" has to be defined similarly to the words that precede it.

And in the ***Bremer Bank*** case, what the Court of Appeals said is "sell, lease, license, or otherwise dispose," "otherwise dispose" has to involve essentially a transfer of title, and because the bank in that case did not

enter into a transaction to transfer ownership or possession of the motor home, there was no other disposition.

And that's consistent with actually the dictionary definition of disposition, the act or power of disposing, such as transfer to the care or possession of another, and obviously there's a key difference in the parties' interpretation of how this partnership provision applies to the Equity Purchase Agreement.

It is clear under Minnesota law that the grant of an option to someone to buy property does not convey any interest or title in that property. And so here we have parties who intended a narrow definition --

THE COURT: Until it's exercised.

MR. BAUDRY: Until it's exercised. And even then, if it's exercised, it still may not come into fruition because the NBA still has to approve it.

So let me just go back. They say we're running away from "series of related transactions."

THE COURT: Just so I'm clear on something.

MR. BAUDRY: Yes.

THE COURT: When you talk about control sale and you will loop in the NBA's approval --

MR. BAUDRY: Yes.

THE COURT: -- you're doing that by tying the definition of control sale to 10.1.

MR. BAUDRY: Yes.

THE COURT: Okay.

MR. BAUDRY: Yes.

THE COURT: I get it.

MR. BAUDRY: The purpose of the related transactions is pretty simple. Let me give you an obvious example.

The Taylor parties sell their general partner interest to a buyer in three different transactions: one-third, one-third, one third. And the series of related transactions is there to prevent them from saying, "We never sold the majority of partnership units. We only sold a third." But obviously if it's to the same buyer, you'd have to aggregate those, and if the aggregate transactions included a majority of the general partnership interests, then clearly you would have a control sale even though no individual sale was a majority of the general partnership interests.

And the last word is -- opposing counsel talked a great deal about this, but the acid test, you can't have a control sale unless you have two things: sale, exchange or other disposition, and, two, it includes a majority of all the general partnership interests.

And Your Honor correctly noted that "general partnership interest" is a defined term under the

Partnership Agreement and it means the general partnership interest held by the general partner in its capacity as general partner. So unless you have those two things, sale, exchange or other disposition, which includes a majority of all the general partnership interests, you can't have a control sale.

THE COURT: Let's pull that microphone just a little closer if you could, Mr. Baudry.

MR. BAUDRY: Yes.

THE COURT: Thank you.

MR. BAUDRY: We talked about drag-along rights. What Section 10.8 does is to define the tag-along (sic) right, and I start with the tag-along -- the drag-along right first because it has priority under the Partnership Agreement, and the general partner gets first dibs on whether or not to exercise a drag-along right.

So what this section tells us is: "Subject to Section 10.1, if ... the Taylor Group ... desires to approve or consummate a Change in Control," which is a defined term that includes a control sale, then "the Taylor Group shall have the right ... to require each of the other Partners ... to approve and participate in the Drag-Along Sale ...."

If you look at the words in 10.8, they're a little different than the words in 10.7. So the words are: "if ... the Taylor Group ... desires to approve or

consummate," not propose, approve or consummate. So you have to have an initial proposal, that proposal has to be accepted, and then the general partner has -- if he wants to approve or consummate -- will have the right to drag along the other partners, limited partners.

THE COURT: Define "consummate." Close?

MR. BAUDRY: Yes.

THE COURT: Okay.

MR. BAUDRY: And as we'll see, a close assumes prior NBA approval.

So then let's talk about how the drag-along right is exercised. So, the drag-along right is exercised if the general partner, not less than 15 days prior to the consummation of the drag-along sale, not less than 15 days prior to closing, gives written notice to the dragged partners, to the limited partners, setting forth purchase price, anticipated closing date.

And then it says if the drag-along sale involves a control sale, which if the second tranche option was exercised, for example, and approved, then the dragged partner shall drag along on the date of the drag-along sale, sell all of their partnership interests.

THE COURT: Can I ask a question about that?

MR. BAUDRY: Yes.

THE COURT: How could a drag-along sale not

involve a control sale?

MR. BAUDRY: I don't know the answer to that question, because logically a control sale requires a disposition of a majority of the general partnership units, and that's what triggers drag-along rights.

THE COURT: I understood drag-along sale to be a subset of a control sale, right?

MR. BAUDRY: Yes. A drag-along sale is a sale in which the general partner has exercised its drag-along right.

THE COURT: Right. Okay. I guess what I'm required -- to have that confusion, I'm required to read "change in control" to mean a "control sale"? Is that always true?

MR. BAUDRY: If we go back one slide, a change in control, one of the definitions is control sale, but it also could include --

THE COURT: Asset purchase.

MR. BAUDRY: Asset purchase.

THE COURT: Yes. Okay. Got it.

MR. BAUDRY: Right. So, one of the arguments that was made in the reply brief of the plaintiff was, oh, this is so terribly unfair. Our position is that tag-along rights under 10.7 can never come into existence before the transaction closes, and therefore you're essentially writing

tag-along rights out of the agreement, and that's just absolutely not the case.

And 10.8(b) shows us why that's not the case, because if the general partner wants to exercise the drag-along right, there is a cutoff date by which it must do it, and that cutoff date is not less than 15 days prior to the consummation date. So, if you have a closing date and the general partner has not issued a drag-along notice 15 days earlier, then they can't thereafter exercise drag-along. And that means that there will be at a minimum, at a minimum a 14-day period, a two-week period, in which limited partners get to decide whether they want to exercise their tag-along rights, and we're going to look at 10.7.

So it's just not right, it's just wrong to say that tag-along rights don't come into existence except after closing. No, there was a minimum two-week period, because that's the cutoff date after which the general partner can no longer elect the drag-along right. And everyone -- I mean, it's really the buyer, right, who tells the general partner whether they want to keep the -- or whether they're amenable to keeping the existing partners in or whether they want to bring in their own group and they want everyone out.

So this section presupposes that the general partner might wait until the 15th day before closing. In reality, as this transaction demonstrates, they know long

before. And in this case, in this transaction, the general partner has advised the limited partners that if the second tranche option gets exercised and the majority of the general partnership units transfers to the buyers, then in that event the Taylor parties intend to exercise the drag-along rights and all the limited partners get bought out on the same terms and conditions as the Taylor parties.

So, let's then talk about 10.1, because 10.8(b) -- or 10.8(a) has a very important little preamble: "Subject to Section 10.1."

In 10.1, which is part of the old Partnership Agreement, it says:

"A Partner may not Transfer or assign all or any part of such Partner's Partnership Interest except in accordance with this Agreement." And that: "No proposed Transfer" -- and "proposed" is the wording used in Section 10.7 -- "which [] fails to comply in all respects with all applicable provisions of NBA Regulations, including the obtaining of any required consents, will be effective for any purpose."

And that's very important, and the reason it's very important is because owners face very harsh penalties from the NBA if they attempt to transfer partnership interests without the League's prior approval. And this is from Article V of the NBA Constitution regarding transfer of

memberships:

"No membership ... may be sold, pledged, hypothecated, assigned, or otherwise transferred or encumbered (each a 'transfer') in whole or in part, directly or indirectly, except in accordance with the subject to the following provisions of this Article 5."

And, you know, what's interesting is, this is another example, this is another definition of the word "transfer" that the parties could have selected in the definition of "control sale." It's similar to the definition of "transfer" in the partnership, but the point is that there's very broad definitions of "transfer" when it's appropriate to do so, and what the NBA is saying is, you do anything with your partnership interests that fits into any of these boxes, then you trigger the provisions of this Article 5.

"Upon receipt of an application requesting approval ... the Commissioner" of the NBA conducts an investigation.

"A transfer shall only become effective if approved by the affirmative vote of not less than three-quarters of all Governors at a meeting called for such Purpose ...."

And "Any violation of the provisions of this Article 5 shall constitute a violation of Article 13(b)."

And Article 13(b) says: "The Membership of a Member or the interest of any Owner may be terminated" if the owner does or allows "any of the following: [] Transfer or attempt to transfer a Membership or an interest in a Member without complying with the provisions of Article 5."

THE COURT: What's the definition of membership in Section 13? If there's an easy answer, great.

MR. BAUDRY: It's in the NBA Constitution, and if you just give me a moment --

THE COURT: Certainly.

MR. BAUDRY: -- I will find it for you.

(Pause)

MR. BAUDRY: It's not immediately apparent to me where in the -- let's see. There's a definition section. Yes.

This is on page 2 of the NBA Constitution:

"Membership shall mean the rights, privileges, and benefits granted to a Member by the Association, including without limitation the right to organize and operate a professional basketball team to play in the League."

So you try to do a transfer and not get League approval, you potentially can face a very, very harsh sanction, and that's why you have the Section 10.1 in the Partnership Agreement to make clear that no proposal, no contemplated agreement, is effective for any purpose without

NBA approval.

So, I've done this summary slide of what the elements of a drag-along right are.

First, it "Requires 'Control Sale,' transfer of title to a majority of the GP interest," and we say that's our interpretation of ***Bremer Bank***, that title to a majority of the general partnership interests actually has to transfer to a buyer, or third party, to even give rise to a drag-along right.

Second, "Proposed Transfer not effective for any purpose unless NBA approves [it]."

Third, there's a required notice, which "include[s], among other things, [the] purchase price and the anticipated closing date."

And the point there is that Section 10.8 is contemplating an actual control sale with an actual closing and a purchase price and a definitive agreement, not a hypothetical transaction in the future, an actual closing of a control sale.

And lastly, in terms of timing, a "Drag-Along Right is effective if notice is provided at any point up to 15 days before closing." After that, no more ability by the general partner to exercise the drag-along right.

THE COURT: If League approval is part of that, does that last "Effectiveness" block, is that accurate?

Should it really say 15 days before closing or League approval, whichever comes later?

MR. BAUDRY: Well, as a practical matter, because of the prohibition in Article 5 of the NBA Constitution, you're not going to hold the closing unless the NBA approves it.

THE COURT: Got it.

MR. BAUDRY: All right. Then I want to talk now about 10.7, the rights that the plaintiff believes have been violated here. We see the exact same preamble, "Subject to Section 10.1," but the trigger language is a little different: "in the event ... the Taylor Group ... proposes to enter into a Control Sale ... and the Selling Partner does not exercise the Drag-Along Right ...."

Now, there's at first blush a little bit of an inconsistency between 10.7 and 10.8, because on the one hand it's saying you don't get to tag along unless the selling partner elects not to exercise the drag-along, but the trigger appears to be the word "proposes" as opposed to trigger language in 10.8, which is "desires to consummate or approve."

And at first glance you say -- it's how do you harmonize these, and the harmonization is the language "Subject to Section 10.1," because in order to be effective, a proposal has to be accepted and approved by the League and

the general partner has to elect not to exercise its drag-along right.

And the interpretation that the plaintiff offers of Section 10.7(a) is -- what they're telling you is the words "Subject to Section 10.1" mean nothing. The only relevance of the different conditions in Section 10.1, sales of securities laws or threatening to make a limited partner liable for a general partner, this is the one, the League approval, that is directly relevant to tag-along rights and drag-along rights.

THE COURT: You'll grant that it's a little bit unnatural to call a League-approved transaction a quote-unquote proposal?

MR. BAUDRY: Yes.

THE COURT: Okay.

MR. BAUDRY: But it cannot be the case that the words "Subject to Section 10.1" don't mean anything, and the Court has to harmonize 10.7 and 10.8, and really the only way to do it is to look at those words, "Subject to 10.1." And then it makes sense, because if it requires League approval to be effective for any purpose, then the general partner has the decision to make once League-approved: Do I exercise my drag-along rights or not? They have until 15 days before the closing to decide that, and then the limited partners at that point, from day 14 before closing to

closing, have the option to elect their tag-along rights at that point.

But -- and it has to be right, because the condition in Section 10.7(a) that tag-along rights -- you never get to tag-along rights unless the selling partner has decided not to exercise the drag-along right, and the decision under 10.8 of the seller to exercise or not a drag-along right does not happen at proposal. It happens at consummate. And they are expressly acknowledging in Section 10.7(a) that the tag-along right is subordinate to the drag-along right, so if the general partner elects to do a drag-along, there is no tag-along. And really in some sense it doesn't matter, because the limited partners are getting bought out one way or the other.

But the point is, by giving priority, by recognizing the priority of drag-along rights, the whole -- at the very instant you utter the words, "I'd like to offer to sell my general partnership interest to you," that that triggers tag-along rights, that does not work with the Agreement. As you work through it, it doesn't work.

It's also consistent with what the plaintiff in its correspondence to my client said was the purpose of tag-along rights. These tag-along rights were and remain intended to ensure that no limited partner will be forced to remain in the partnership without having a say in the

identity of the general partner, and that is the purpose of a tag-along, obviously.

But the point is, if that's the purpose and you have a transaction which may or may not happen in the future or may or may not be approved by the League, then there's no need to have a tag-along if there's no change in the general partner. So if the control sale either doesn't get exercised or even if it's exercised the League says, "We're not letting this buyer become the general partner, we veto this," there's no change in the general partner.

And so the very purpose of tag-along rights is unnecessary at that point, and what they're trying to do is take what are essentially "me too" provisions that say if a majority of the general partnership interests get bought out, then the limited partners either can be dragged out or can elect to tag out, and they're trying to say that it's not a "me too," it's a "me first," and that just isn't consistent with this Agreement.

Again, 10.7 says: "Subject to 10.1." I'm not going to reiterate what I said, but it's clear that NBA approval is a condition of 10.7. And when it says a proposal isn't effective for any reason, it can't trigger tag-along rights if it's not effective, and they just -- their argument is, well, it can be an ineffective proposal, but, you know, we still get to tag along. That doesn't make

any sense.

The sale notice in Section 10.7 also requires within ten days of the execution of any definitive agreement by all the parties thereto a sale notice which describes a proposed date, time and location and a copy of the definitive agreement.

Is there a definitive agreement between the Taylor parties and the buyer for the sale of any partnership interests beyond the first 20 percent? Absolutely not. The Equity Purchase Agreement is unenforceable against the buyer with respect to any partnership interests other than the first 20 percent. So, if they're going to elect to purchase any of the interests subject either to the second tranche, the third tranche, or the fourth tranche, then there needs to be a contract between the buyer and the Taylor parties -- and potentially the limited partners -- that makes that obligation enforceable, and right now it isn't.

So, let me now summarize the elements of tag-along rights under Section 10.7. Requires a control sale.

THE COURT: Let me just -- sorry. Before you get to that --

MR. BAUDRY: Yes.

THE COURT: I'm up here thinking and trying to listen at the same time --

MR. BAUDRY: Sure.

THE COURT: -- and I do a lousy job of that sometimes, so let me make sure I understand this. You're defining "definitive" as it's used in 10.7(b) --

MR. BAUDRY: Yes.

THE COURT: -- as only being met if the rights to a controlling general partnership interest, the sale of a controlling general partnership interest, are enforceable.

MR. BAUDRY: Right. I wasn't -- I'm not even tying it to general partnership interests. It could be even any of the limited partnership interests. Right now there is no enforceable agreement which obligates the buyer to close on any of the tranches: first tranche, second tranche, or third tranche, just has an option.

THE COURT: All right. So "definitive" means "legally enforceable."

MR. BAUDRY: Yes.

THE COURT: All right. I get it. Thank you.

MR. BAUDRY: So what are the elements of a tag-along right? First one is "Control Sale, transfer of title to a majority of the GP interest."

Two requirements here, the "proposed transfer not effective for any purpose unless NBA approves transaction," and second, "tag-along rights cannot exist if the general partner has exercised the drag-along right."

And that's the other reason why their definition

of proposed -- their argument that, well, if you propose to sell your partnership interests regardless of whether that offer is accepted, even if it's accepted, regardless of whether the League approves and regardless of whether there ever becomes a new general partner, we get to cash out. That's just commercially unreasonable and absurd.

The "notice must include, among other things, the purchase price and the anticipated closing date." Again, 10.7 contemplates an actual control sale with an actual closing date, purchase price, et cetera. It contemplates a real transaction, not a hypothetical, not a maybe. You don't get to tag-along on a maybe. You have to tag-along on an actual control sale.

And "Effectiveness. Tag-along rights are effective if a limited partner provides written notice to the general partner within 15 days of receiving sale notice from the general partner," but the general partner doesn't have to provide a sale notice up to 15 days before closing, because they can still up to that point decide to exercise tag-along rights.

I want to address the subject of control -- the argument that, well, the evidence that the Equity Purchase Agreement is a control sale is the fact that the Taylor parties have ceded control of the partnership to the buyer, and nothing could be further from the truth.

So the first thing is that under the Partnership Agreement -- this is not unique to this partnership -- this is just basically, as the Court is aware, a function of partnership law. You have a general partner who gets to exercise exclusive management and control, and then limited partners, who are essentially passive investors. And the benefits of being a limited partner are that you don't face liability for partnership obligations, whereas the general partner does, so there's a trade-off.

But here, the Partnership Agreement makes clear that only "The General Partner shall have the exclusive management and control of the business ..., and all decisions regarding the management ... shall be made by the General Partner," and "[t]he General Partner is hereby granted the right, power, and authority to do ... all things which, in its sole judgment, are necessary, proper, or desirable to carry out" the management of the business of the partnership.

And it goes on to say, just to be clear:

"Without limiting the [prior grant of authority] ... it shall have the power and authority of the General Partner, it shall have the power and authority ... to take any and all actions it deems necessary or prudent to comply with NBA Regulations. NBA Regulations is a defined term that includes the NBA Constitution under the partnership

plan.

There's another provision saying: "Limitations on Control. Except as explicitly provided in this Agreement, no Limited Partner shall have the right to participate or interfere in the management or control of the Partnership business." And this is a standard provision in most partnership agreements and it's consistent, where the general partner has all the power and authority and limited partners have none.

And what they're trying to do is, they're reading this as if the limited partner would have standing to bring suit if the general partner decided that he wanted to enter into a contract with a limited partner to provide consulting or advice about the business.

What 9.3 is saying is that the bundle of rights that comes with being a limited partner does not include the right to participate or interfere in the management or control of the business, but that doesn't stop the general partner, who has sole discretion, to enter into a separate contract, not the Partnership Agreement, but a separate contract with someone who happens to be a limited partner to provide some kind of services to the partnership.

The best example of that that I could give you is Flip Saunders. He was -- he's a limited partner, or now his estate is a limited partner, but at the time that he was the

general manager and coach of the team, he was also a limited partner. And that was pursuant to a separate contract and that doesn't violate 9.3. And really what 9.3 is saying is limited partners like the plaintiff don't have the ability to participate or interfere with how the general partner decides they want to manage the organization.

And this (indicating) is what was very surprising. This is their reply brief that the plaintiff served I think last Friday, I think, Thursday. They say: "Orbit invested in a Partnership with an established management structure, which may not be changed without its consent."

Wow. I don't know where that is in the Partnership Agreement. What I read was a limited partner shall have no right to participate or interfere in the management or control of the partnership business and the general partner has exclusive management and control of the business. So if the general partner decides that he wants to have an advisory board, he can do it in his sole and absolute discretion and they can't object or interfere. If the general partner wants to nominate someone to be an alternate governor on the board, it's actually his obligation to do that.

THE COURT: I get this argument. Can I ask: My understanding of one of the arguments that was in the brief is that the actual agreement with the buyers and the

creation of this advisory board doesn't give them management or control in any sense.

MR. BAUDRY: Right.

THE COURT: As a matter of contract law.

MR. BAUDRY: Yes.

THE COURT: Not a fact of contract law.

MR. BAUDRY: As a matter of contract law.

THE COURT: Right. So resolvable as a matter of law.

MR. BAUDRY: Yes.

THE COURT: And then we've got the affidavit from the NBA official --

MR. BAUDRY: Yes.

THE COURT: -- who says being a governor doesn't give you control, management or operational control over a team.

MR. BAUDRY: Right. The NBA does not get involved in how -- I mean, obviously not every franchise is a partnership, right, some may be corporations, but what the role of the governors are, the League is run by the NBA Commissioner and the NBA Commissioner reports to the Board of Governors. And under Article XVIII of the NBA Constitution, every member has to be on the board and each member has to submit to the Commissioner in writing the name of such governor and the names of up to three alternates.

You have to submit the name of at least one alternate, but up to three.

And the point is that what the governors do is, they oversee how the Commissioner regulates the League, but the Commissioner does not get involved in partnership affairs. He doesn't say, you know, "I think you should change your tax status." The Commissioner is basically focused on the professional game and that does not involve the business of the partnership, the internal affairs of the partnership.

THE COURT: Today you're sort of doing those arguments one better and maybe it was in the brief and I missed it -- that's totally possible -- which is, I think you're suggesting that even if any buyer had some kind of operational control as a limited partner did at one time, right?

MR. BAUDRY: Right.

THE COURT: As GM.

MR. BAUDRY: Right.

THE COURT: That would not violate --

MR. BAUDRY: It would not, because the general partner has the ability and sole discretion to decide that they're going to enter into a separate contract. In other words, in that case it's not the limited partnership status that is giving the limited partner that right. It's a

separate contract negotiated.

THE COURT: I get it.

MR. BAUDRY: This is the Maczko declaration, NBA Head of Investor Transactions. His precise statement is: "[A]ppointment as an Alternate Governor does not provide the appointee with any control rights with respect to a team." And he didn't use the word "partnership," because as I said, not every team is a partnership, but the NBA does not get involved in the internal management of the franchises.

So, I want to then talk about the Equity Interest Purchase Agreement with the company controlled by Lore and Rodriguez.

And so this is -- 2.1 is what I've referred to as the only enforceable obligation against the buyer, and that is that they'll acquire 20 percent of the limited partnership interest at the closing, and then effective as of the closing the seller partners, parties, grant a series of call options to acquire all of the remaining Taylor units, and they also -- the seller also commits -- as general partner, Taylor Sports Group, Inc. will grant a call option to acquire all the other limited partnerships' interest pursuant to a drag-along right.

The grant of options -- and this is consistent with Minnesota law. And we didn't cite to other states' laws because I didn't think it was relevant, but this is

not -- Minnesota is not an outlier. This is just sort of hornbook law, that what an option is is an outstanding offer that can be accepted at any time by the buyer until the end of the option period, but it doesn't transfer any interest in the underlying property. And so that's obviously directly relevant to whether the grant of an option to acquire a majority of the general partnership units is a control sale, and it just isn't under Minnesota law, just isn't.

Then this is the -- Section 6.1(b) talks about the different tranches and the Court's already heard about it and I'm sure read it, and what I've highlighted here is the second tranche, which consists of the outstanding general partnership units, hundred percent, and 31 percent of the LP units to be purchased from the seller parties and the non-Taylor partners, so this is -- this is the drag-along.

The second tranche, the Taylor parties sell their general partner units, a hundred percent of them, and they sell some of their limited partnership units and all of the limited partners who are non-Taylor parties get bought out. And the period of time that this option can be exercised is after the first tranche option, which is -- first tranche has to be exercised between the day of closing of the first 20 percent and December 31st, 2022.

And then what this is saying is only if the buyer

exercises the first tranche and closes on it, then the second tranche can only be exercised after the exercise of the option and before December 31st, 2023.

And the way the Equity Purchase Interest Agreement reads is if at any point along the sequence the buyer elects not to close. And they're sort of suggesting, though, this is a nod-nod, wink-wink, and of course the buyer is going to exercise the options. Well, there are a lot of reasons why that might not happen.

I mean, for example, the valuation of the team assumes that the NBA will be able to resume a normal season starting next October and that COVID will -- and the restrictions on COVID and on attendance and so forth will not be there. You know, God willing that that is the case, but, you know, who knows with this pandemic. Or there may be a downturn in the economy, an unexpected downturn in the economy or a crash in the stock market. I mean, there are a lot of reasons outside the control of these parties and the buyer may decide that it doesn't want to exercise any particular options, and that's why these are all maybe and hypothetical.

I wasn't quite sure what point my colleague on the other side was making, but what the Maczko declaration is saying is that what the NBA does is they actually look at not just the initial sale of the 20 percent partnership

interest, but they look at the entire structure of this Equity Purchase Interest Agreement, including the option tranches. And they don't initially approve any of the option tranches. They look at the entire structure of this agreement and they say are we comfortable approving this agreement in this form. That's one of the issues that the NBA has to decide. So they have to approve the actual form of agreement and who knows. They could require changes. I mean, no one knows at this point. But that's what the initial review of the options is, is this transaction structured in a way that is acceptable to the League.

And then he says that the point is that the NBA will not review any individual option to decide whether to approve it until and unless the option is exercised. So the NBA, like this Court, is not in the business of giving advisory opinions and they're not going to undergo all the vetting and so forth unless they are actually informed that the buyer has exercised the option and that the parties want to move forward. And can anyone tell us what the League is going to say about, you know, in 2023 if the buyer decided to elect the -- exercise the second tranche option? We don't know anything about what the financial package is, who the group of investors are. I mean, that's one of the reasons, obviously, the buyer wanted to structure the Agreement in this way, to give it time to put together a

package, but it's impossible to say whether the League will grant approval.

So there are two fundamental conditions that make each of the tranches a hypothetical and speculative. The first is will the buyer actually exercise the tranche, and the second is will the League approve it, and sitting where we are today in 2021, no one knows the answers to those questions or can know them.

We've talked about this. Taylor hasn't exercised its drag-along rights yet because they haven't come into being, but it has contractually committed to do so upon buyer's exercise of the call option with respect to the second tranche.

And this is the timing. This is the contemplated timing under the Equity Purchase Agreement. "The consummation of the exercise of each Call Option" -- so option has been exercised and now we're at a closing -- "must occur, subject to prior NBA approval, no earlier than 60 days following the Call Exercise Notice and no later than 90 days following the delivery of the Call Exercise Notice." So there's a two- to three-month period that presumes that NBA approval will be obtained in that window, but if it's not, then that 90-day period gets automatically extended by another 90 days.

I want to go back to Exhibit I, the portion of the

Equity Purchase Agreement that is called "Governance Matters" that they claim is evidence that control has been transferred. And the Court may have seen this and I don't want to belabor it, but I just did want to go over it, and I provided a hard copy to the Court because the layout is a little bit funky.

So this is an excerpt from the first page of Exhibit I, but it just reinforces that: "Any change in the Controlling Owner or the General Partner ... shall be subject to the prior approval of the NBA."

"The Controlling Owner," which for our purposes I think we can read as General Partner, "will have exclusive power and authority to act for and bind the company, including the Minority Owner, with respect to all matters relating to the NBA and the basketball and business operations ...."

Then it says: "On all matters which are not Core NBA Matters, the Controlling Owner, the General Partner and the Minority Partner shall have those rights and obligations provided in the Partnership Agreement ...."

And I misspoke. I apologize. Controlling Owner is not the same thing as General Partner. The Controlling Owner with respect to the Taylor parties is Glen Taylor, who's been on the NBA Board of Governors since he purchased the team, and then it's either Marc Lore or Alex Rodriguez

if they acquire a majority of the general partnership interests.

But in any event, then on non-core NBA matters, it says that the minority partner -- and right now, if the first 20 percent tranche -- not the first tranche. If the first 20 percent limited partnership interest closes and is approved, then the Lore and Rodriguez group is a minority partner. And then conversely, if they exercise the first tranche and it's approved and they exercise the second tranche and it's approved, then at that point the Taylor parties become the minority partner, because all they have left is a 20 percent limited partnership interest and the buyer group has everything else, and then they get the last tranche, that last 20 percent, and either they will take out the Taylor Group or the Taylor Group will remain a limited partner.

And, you know, one of the reasons that general partnership interests weren't included in the first tranche or the second tranche is -- and certainly not the first tranche -- is that it's in the interests of the general partner until the buyer actually decides to buy the general partnership interest to maintain control, and so that's why it was structured in that way.

So, yes, the minority owner, the buyer, has some consultation rights and those rights are on -- they're

listed on the first and second pages, important matters that affect the future prospects of the team, such as relocating the team, or entering into new lines of business, or incurring or guaranteeing indebtedness.

And it's not remarkable at all that if you have a party who is potentially investing up to $1.5 billion to acquire all of the rights of the entire franchise, that they would want to be consulted with to express their opinions about any of these major changes.

But it's very clear that it is just the right to consult and that: "Failure to engage in presentation and discussion with the Advisory Board as contemplated herein with respect to any matter shall not constitute a breach or invalidate any action taken without presentation and discussion," meaning the limited partner, the buyer, has no right to enforce this section and say, "You made a decision without consulting with us."

Now, it would be imprudent, I would agree, for a general partner to make a major decision that the buyer expected to be consulted with about and not consult with the limited partner, but they don't have the legal obligation to do that, and that's why the general partner retains all power and control and this is just an advisory board.

Then there's a provision actually relating to the Advisory Board, and the language I've highlighted is: "For

clarity, the Advisory Board is advisory only and no action by the company, including those specified in the prior section ... requires the approval, in any form, by the Advisory Board.

So all this list of things that they're supposed to be consulted with, they don't have a say. They can give their opinion, but that's it. They don't have the right to control the general partner, to direct the general partner. The general partner remains at all times in sole and absolute control of all decisions that are made with respect to the partnership.

We cited the Court to a case from Delaware, ***Werner v. Miller Technology***, which addressed this very issue, and there the Delaware court said:

"The Advisory Board's role in [Defendant's] management structure is to offer opinions regarding decisions that the general partner, as manager, will ultimately make. Nowhere in the Partnership Agreement or the PPM is there language that gives the Advisory Board the power to direct the actions of the general partner. The ability to offer ideas cannot be construed as an ability to manage the affairs of [the defendant]. The suggestion that the Advisory Board participates in management simply because it contributes information to the decisionmaking process is untenable."

And the Court is I'm sure aware that Delaware is one of the most respective jurisdictions on matters of corporate law and that Minnesota courts, when Minnesota law is not developed on a particular point, look to Delaware law for guidance. And we cited to two cases. One was this Delaware case and the second was a Ninth Circuit case which said the same thing, that unless you could demonstrate that the person on the advisory board -- even if they were influential because they were a big bank -- unless you could demonstrate that they could actually control the general partner, they were not exercising control or management.

THE COURT: Through legal authority.

MR. BAUDRY: What's that?

THE COURT: Unless they had the power to control through legal authority.

MR. BAUDRY: Yes, and that's why you can resolve this issue --

THE COURT: Not the power of persuasion.

MR. BAUDRY: Yes. You can as a matter of law look at these documents and say the advisory board does not cede any management control or authority to the buyers because they are in an advisory role only, and it's crystal clear from Exhibit I that that's the case.

And then the funny thing is that Mr. Orbach was invited to join the Advisory Board. This is a May 17th

letter from Glen Taylor to Meyer Orbach, and he says:

"I will be establishing an Advisory Board on which Lore and Rodriguez would have seats. If you are willing, I would also like to have you join the Advisory Board. This would provide a further opportunity for you to assess whether you enjoy working with them and if you would like to retain your limited partnership interest with additional opportunity for additional appreciation in value."

I mean, Mr. Taylor is offering him a seat at the table. There's nothing secret or underhanded about the Advisory Board. How is Mr. Orbach irreparably injured by the creation of an advisory board that he was invited to sit on? Obviously he isn't. And this whole idea that the creation of an advisory board which hasn't happened yet, which hasn't done anything, irreparably injures him when nothing has happened? He can't point to anything that has harmed him. It's entirely speculative, as is the whole deal with the alternate governor. There's no irreparable injury. It's all speculative.

All right. What I'm going to do now is summarize the two theories, the flaws with the two separate theories offered by the plaintiff.

The first theory is, oh, the Equity Purchase Interest Agreement is a control sale, and the reason why that doesn't work, as I've said, it doesn't transfer a

majority of the GP interest, grant of an option as a matter of law, not even subject to factual, not a matter of fact, but as a matter of law is not an other disposition, and the language from the Minnesota Court of Appeals case is virtually on point.

And that case didn't turn on the fact that it was a UCC case. That had nothing to do with it. I mean, it was interpreting a statute and it said this is how you interpret these words, which are virtually the identical words before this Court, except the differences in that case, license was an additional term and in this case license is not -- it's three words in our case.

Second, the first closing on the 20 percent limited partnership interest does not convey any right to control or manage the partnership. It's just a conveyance of a limited partnership interest with no rights of control. And the Taylor parties obviously retain all authority to act as general partner until and unless the second tranche option is exercised.

And an option to acquire the GP interest doesn't convey any right, title, or interest in the GP units? Is it something of value? Is an option potentially valuable? Sure, but that's very different than saying that it's conveying an interest in the underlying partnership interests.

There was a mistaken comment made by opposing counsel. He said, well, the Taylor parties have given up the right to sell their units to anyone else, and actually this is not true. So it's -- 16.3 of the Equity Purchase Agreement says that the Taylor parties are free to sell all of their units to any third party subject to the third party agreeing to the options, recognizing the options, but we don't know if those options will be exercised and nothing prohibits the Taylor parties from if they find a buyer willing to pay $2 billion to sell their interest for two billion to this buyer, the only condition being the buyer would have to recognize the existence of these prior options, but we are not prohibited, absolutely not prohibited, from selling these units during the option period.

No one -- and then as I pointed out, the language in both 10.7(b) and 10.8(b) contemplates a real closing on a real control sale where a majority of title to the general partnership interest passes. And it's not a maybe, perhaps sale in the future, and that's the point. No one gets to tag along on a maybe. There may or not be a control sale. We won't know until the buyer elects or not to exercise the second tranche option.

And then this argument that, well, the first 20 percent, it's in the same contract as the agreement to grant

options and therefore it's a series of related transactions. That's analytically incorrect. So the transfer of the first 20 percent doesn't give those 20 percent limited partnership units any particular rights than if it was in a stand-alone agreement. And it's related transactions that otherwise dispose of the majority of the general partnership agreements. And I'm repeating myself, but the grant of options just doesn't do that.

And then finally, the obvious purpose of the related transactions limitation, as I indicated, to prevent the GP from selling its interest in separate transactions and saying, you know, "I never sold a majority of them."

Now, the second reason, their second alternative theory, why a control sale proposal does not trigger tag-along rights. Again, Section 10.1 incorporated by reference as 10.7 requires legal approval, and that language has to mean something. You can't interpret 10.7 to say it doesn't matter, those words don't mean anything. All you need is a proposal. Then that would --

THE COURT: I get that. I get your position on that.

MR. BAUDRY: Yes. So if it's an ineffective proposal because the League hasn't approved it, it can't trigger any rights, right, and that would render 10.8 null and void -- I think it's 10.8(a) -- null and void since

they're saying tag-along rights would vest now before drag-along rights, and that's exactly contrary to 10.7(a), would convert a "me too" to a "me first" and would allow limited partners to cash out even though there may never be a control sale and no change in the general partner.

And if the purpose, according to them, of tag-along rights is to prevent them from finding themselves in the general partnership where they didn't get to pick the general partner, why would it make sense to have their tag-along rights triggered before you knew whether there was going to be a new general partner? If there isn't going to be a new general partner, there's no need to protect the limited partners from a potential sale, and if there is, they automatically get bought out and the plaintiff makes a very substantial return on its investment.

So those are all the reasons, Your Honor, why we believe that not only can't they show a likelihood of success on the merits, but they can't even state a claim for breach of the Partnership Agreement and why we believe that this complaint is susceptible to Rule 12 dismissal.

THE COURT: Thank you, Mr. Baudry. All right.

MR. BAUDRY: I --

THE COURT: Sorry.

MR. BAUDRY: I see it's 4:00 o'clock. I was just going to address a couple of points on irreparable injury.

THE COURT: Certainly.

MR. BAUDRY: The first is, you read the complaint and what this plaintiff wants is a buyout, money damages, and that just isn't the kind of claim that gives rise to irreparable injury. And if the plaintiff is really concerned about the liquidity of the Taylor Group, then why would they object to a transaction where the Taylor Group is getting liquidity.

Second, their point is, well, we wouldn't be harmed if the Court entered an injunction. And you're right that the agreement says time is of the essence, but I wanted to make sure that the Court was aware of the provision in the Equity Purchase Agreement that says if the first 20 -- sale of the 20 percent interest doesn't close by July 31st, then the buyer can walk away at its option.

THE COURT: And I apologize. When I said that, I intended to refer to that provision.

MR. BAUDRY: Yes. And so the consequences of an injunction potentially would be very significant. It would be potentially the loss of a very significant potential agreement, and their response is, "Well, you haven't been harmed. You still have your partnership interests." But that agreement can be just as easily applied to them. They still have their limited partnership interests. They can wait two years and see if this buyer exercises the second

tranche option, and if they don't want to wait two years, nothing is preventing the plaintiff from selling its limited partnership interests. So there's no -- I mean, just apply the same logic to them. That eviscerates their irreparable injury argument.

And then with respect to the alleged management control and advisory board and alternate governor, I mean, it doesn't -- they don't even allege a breach of the agreement and they don't articulate how either of those will cause them specific immediate irreparable injury. I mean, all he tries to say is, "I bought into this deal with a particular structure and you've changed the structure," but they bought into this partnership understanding that they had no control over that structure and they were specifically committed all control over what the management structure was going to be to the general partner. So ironically, they're doing what Section -- I think it was 9.1 or 9.3 -- says they can't do. They're interfering. They're trying to interfere with a general partner deciding how he wants to run his business. So not only do they not state a claim. They're actually violating the Partnership Agreement by trying to interfere with the operation of the partnership.

That's all the comments I had unless Your Honor has any questions.

THE COURT: No, I don't have any further questions at this time. Here's how we're going to wrap up today.

Orbit by my count had a little over an hour and a half time to argue. The defendants have had about an hour and 20 minutes or so, give or take. I think that's plenty of time along with the briefs I've had or I've received that have been filed by the parties to understand what's going on here today, but I want to give the parties an opportunity to provide some rebuttal. I don't want to shut you out of that completely, but I'm going to shorten it. So I'm going to give each of you ten minutes of rebuttal time to respond to the arguments that the other side's made.

I appreciate that there was additional argument that was potentially going to be given on the motion to dismiss here, but since it relates solely to the merits, I can't imagine how it would be different than the extensive merits sort of focused argument that was given before. So let's keep our rebuttal under ten minutes if we could, please.

And, Mr. Schafhauser, let me start with you.

MR. SCHAFHAUSER: Thank you. I'm going to take less than two minutes and then I'm going to hand it to Mr. Krauss to finish up.

THE COURT: If you could turn on your microphone, that would be great. Thanks.

MR. SCHAFHAUSER: I apologize. I'll be very brief. I just wanted to focus on a couple of points that my colleague made at the end.

In their brief to the Court on June 21st, docket number 30 on page 15, the Taylor parties say that the information needed regarding the purchase, regarding the amounts -- and this is what it says, and I quote: "The information is currently unknown and unknowable."

In their brief to the Court on June 11th, similarly, the Taylor parties say, and I quote: "Until the date of the call option closing is known, it is not possible to determine the purchase price," and then they go on and talk about how they can't calculate numbers. It sounds to me like the Taylor parties are asserting that the damages are not readily calculable, that the price is not readily calculable, that the numbers are not readily calculable, the classic irreparable injury case.

Briefly moving to one other topic quickly, Your Honor asked both sides for citations and authority that an option is -- you know, another disposition is a valuable right. Well, I would cite and quote two cases, respectfully, to Your Honor. We cited these in the briefs as well. The ***Sanderson*** case, which is a Minnesota case, in ***Sanderson*** the court said, and I quote: "It is well-settled that the right to sell one's property to anyone at anytime

for any price is a property right." It's a property right.

My esteemed colleague says that the EIPA as to the options is not binding as to the buyer, but that misses the point. It's binding as to the Taylor parties. The option is in favor of the buyer. It's binding as to the Taylor parties. They have sold within the words of the Minnesota Supreme Court a property right. They have conveyed it. "It is well-settled that the right to sell one's property to anyone at anytime for any price is a property right." Whether or not the buyer is bound misses the point that the seller, that the option conveyor is bound.

The second case, Your Honor, very succinctly, the ***Crowell v. Delafield*** case, a 1990 Minnesota case as well. The Supreme Court of Minnesota in that case again -- and I quote -- says that: "An option to purchase property together with the permissive use of the property is a property right of some significance," is a property right and it's of some significance. So it's a significant property right that we're talking about. It's not immaterial. And frankly, if hypothetically Mr. Taylor were to go to the buyer and say, "I'll tell you what. We'll sell you 20 percent. Forget the options. The options are immaterial. They're not worth much. You know, I don't want to sell the options." We all know, everybody in this room knows what would happen, because the options are of

paramount importance and value.

So I just wanted to cite those two cases, Your Honor, both Minnesota Supreme Court cases, that go directly to this issue.

And with that I hand it over to my colleague.

THE COURT: Mr. Krauss, I've got you at about six or seven minutes here.

MR. KRAUSS: Thank you, Your Honor. Let me go directly then to Section 10.1 of the Partnership Agreement.

They put a lot of weight on the reference in 10.7(a) to "Subject to 10.1," so what does 10.1 mean there? Well, part of the context is Section 10.7(a) is part of the amendment that Mr. Orbach insisted upon when he joined the partnership, so Section 10.1 is already pre-existing. And what they want to do there is make clear Section 10.7(a) does not displace Section 10.1. So to the extent that Section 10.1 is still putting restrictions on the effectiveness of transfers, nothing in 10.7 changes that. It doesn't supersede that. If you have a control sale and that control sale would lead to a transfer over time once it's effective that would violate 10.1, that transfer, subject to a tag-along sale or drag-along sale or other type of control sale, wouldn't be effective. That's all it does. It doesn't carry the weight that Defendants are putting on it with respect to NBA approval and so forth.

And the proof of that, where's the proof of that? The proof of that is in, for example, Section 10.7(b), as in boy, the sale notice provision, because the sale notice provision, as Your Honor will recall, is triggered within ten days of a definitive agreement. Within ten days of a definitive agreement, if there are tag-along rights to be exercised, there must be a sale notice given.

And the response from the plaintiff is to say, well, you cannot have any sort of exercise of tag-along rights until the NBA already has approved. Well, NBA approval is going to come after a definitive agreement, so they have it very much backwards. The definitive agreement comes first, within ten days there must be the sale notice with respect to allow the exercise of the tag-along rights, and then somewhere down the line, only then do you get to NBA approval.

THE COURT: Then I'll ask you the same question I asked Mr. Baudry. How do you define "definitive"?

MR. KRAUSS: I define "definitive" in this case, Your Honor, as the EIPA. And I will say that I was very surprised and I would imagine that any representative of the buyer would probably be very surprised to hear that the EIPA is not the definitive agreement with respect to their acquisition of all the partnership interests as part of a series of related transactions. There is no other contract

that's contemplated by the EIPA. There is nothing further to bind the Taylor parties. Yes, the buyer has discretion in terms of exercising the options, but as Mr. Schafhauser just noted, the Taylor parties are bound. There is no other agreement.

So, it was frankly somewhat shocking to hear that there's going to be some other contract when the call options are exercised. There's nothing in the EIPA that contemplates that. To the contrary, as Your Honor has gone through the EIPA, the EIPA is comprehensive and it addresses just about everything having to do with the exercise of the call options and the closing on those call options. There's nothing left to be agreed upon.

So that is the definitive agreement. That definitive agreement precedes by a long shot any NBA approval. And in fact, as we have shown in our briefs and Mr. Schafhauser walked through, the entirety of the structure of the tag-along rights and the exercise of the tag-along rights is such that all of it precedes the closing, all of it precedes any of that transfer by the selling partner, including Transfer with a capital T when Your Honor looks at Section 10.7(d)(iii). And there's nothing there about NBA approval being required before those tag-along rights are exercised. To the contrary. You propose to enter into a control sale and that triggers the

tag-along rights as long as there's no exercise of drag-along rights, which there isn't here, because the control sale is what occurs starting -- at first it was early as June 30th, now it's as early as July 13th.

In ways the drag-along rights are a bit of a side show, because there's no dispute. For whatever reason, the defendants are not exercising their drag-along rights with respect to what we say on the plaintiff's side is the control sale. And given that, the tag-along rights are triggered immediately once it was proposed, which is the EIPA, and then at that point we see that -- the breach of the agreement by the failure to honor any of those tag-along rights, much less the opportunity to fulfill them entirely.

THE COURT: All right. Thank you, Mr. Krauss.

Mr. Baudry?

MR. BAUDRY: I've just got a couple of points, Your Honor. I think he referenced the ***M.L. Gordon Sash & Door v. Mormann*** case where the court said the holder of an option has an equitable right. As we point out in our reply brief in that case, the Minnesota Supreme Court said, well, we're not actually dealing with a true option agreement here. The plaintiff had been in possession of the land and there were circumstances that showed that it wasn't a true option.

More to the point, sure, the grant of an option

may create a valuable property right in the holder of the option, but that property right is the right to enforce the option. It isn't -- it isn't part of the corpus of the partnership interest itself. The buyer doesn't have an interest in any of the partnership interests. All it has is the right to enforce the option if and when it chooses to exercise it. That's very different. It's a bundle of rights outside of the partnership unit.

I think that's -- I think we've talked long enough and the Court has been provided plenty of material to chew on, so I appreciate the Court's patience in hearing us out.

THE COURT: And I appreciate that.

All right. Let me just make some comments here at the end so that everybody knows sort of how this is going to go or how I expect this to go.

Obviously this is a complicated set of documents to someone who's never seen them before, but the parties here have done just an excellent job of jumping on this and briefing it in an expedited fashion. Ordinarily it would take us about 45 days at least just to go through the briefing process before we get to an oral argument. Here, if I remember correctly, everything was filed on about, what, the 14th of June, and here we are just, gosh, two weeks later or even a little less, or at least not quite three weeks later, and we've really covered everything, and

I am grateful for that.

I appreciate the need for expeditious treatment here. As you might imagine, we've been working on this, so I expect that we will be able to issue a decision, as I say, expeditiously.

Oral argument's been very helpful today as it always is when you have good lawyers presenting it. It gives me another chance to understand the arguments, a chance to ask questions, a chance to clarify. And I would say that I don't think I heard anything today that is different from what I read in the briefs or radically different from what I understood the briefs to be arguing, so I think we're still in a position here to move along relatively quickly.

I was sensitive originally to the June 30th date as a closing date. I understand we've got a bit more time than that now, but I also want to give the party who thinks they're on the adverse end of this thing an opportunity to appeal, so we're going to try to move quickly and give that party that opportunity however that may shake out here. Obviously, you know, preliminary injunctions are interlocutory, but they are also immediately appealable, whether you win or lose, so that itself, regardless of how the motion to dismiss is decided, presents that opportunity and I want to be sensitive to that.

All right. With that, as I say, I really appreciate the presentation of the motion both in the briefs and here today, the motions, I should say. It's been well-briefed and well-argued. The matter is under advisement and we will issue a decision as quickly as we can, and we're adjourned.

Thank you.

MR. SCHAFHAUSER: Thank you very much, Your Honor.

(Proceedings concluded at 4:22 p.m.)

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C E R T I F I C A T E

I, **TIMOTHY J. WILLETTE**, Official Court Reporter for the United States District Court, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes, taken in the aforementioned matter, to the best of my skill and ability.

/s/ Timothy J. Willette

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